

**STANDARD AGREEMENT**

STD 213 (DHS Rev 7/06)

Exhibit A-1

REGISTRATION NUMBER

AGREEMENT NUMBER

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME

(Also referred to as CDHS, DHS, or the State)

California Department of Health Services

CONTRACTOR'S NAME

(Also referred to as Contractor)

2. The term of this Agreement is: September 1, 2007 through January 31, 2009

3. The maximum amount \$ of this Agreement is:

4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of this Agreement.

|   |               |
|---|---------------|
| Exhibit A – Scope of Work   | 3 pages       |
| Exhibit B – Budget Detail and Payment Provisions  | 4 pages       |
| Exhibit C * – General Terms and Conditions  | <u>GTC307</u> |
| Exhibit D (F) – Special Terms and Conditions (Attached hereto as part of this agreement)      | 26 pages      |
| Notwithstanding provisions 2.5, 6.15, 16, 22, 23, and 30 which do not apply to this agreement |               |
| Exhibit E – Additional Provisions   | 13 pages      |
| Exhibit F – Contractor's Release  | 1 page        |
| Exhibit G – HIPAA Business Associate Addendum   | 7 pages       |

See Exhibit E, Provision 1 for additional incorporated exhibits.

Items shown above with an Asterisk (\*), are hereby incorporated by reference and made part of this agreement as if attached hereto. These documents can be viewed at <http://www.ols.dgs.ca.gov/Standard+Language>.

**IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.**

**CONTRACTOR**

CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.)

BY (Authorized Signature)

DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

**STATE OF CALIFORNIA**

AGENCY NAME

California Department of Health Services

BY (Authorized Signature)

DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

Allan Chinn, Chief, Contracts and Purchasing Services Section

ADDRESS

1501 Capitol Avenue, Suite 71.2101, MS 1403, P.O. Box 997413  
Sacramento, CA 95899-7413**California Department of  
General Services Use Only**☐ Exempt per:

## Exhibit A Scope of Work

### 1. Service Overview

Contractor agrees to provide to the California Department of Health Services (CDHS) the services described herein:

Qualified and responsible assistance to CDHS regarding the different tasks related to the procurement process including skills and experience providing procurement strategies, specifically Medicaid fiscal agent and Medicaid Management Information System (MMIS) procurement strategies.

Contractor shall keep all work confidential. All information, records, data, and data elements collected and maintained shall be protected by the Contractor from unauthorized disclosure.

### 2. Service Location

Unless otherwise specified by CDHS, the services shall be performed at State facilities and locations within Sacramento, California.

### 3. Service Hours

All work will be performed during State working days and hours.

### 4. Project Representatives

The project representatives during the term of this agreement will be:

| California Department of Health Services | Contractor                                  |
|--|---|
| Jerry D. Stanger                         | Name of Contractor's Contract Manager (TBD) |
| Telephone: (916) 319-8010                | Telephone: (XXX) XXX-XXXX                   |
| Fax: (916) 319-8050                      | Fax: (XXX) XXX-XXXX                         |

Direct all inquiries to:

| California Department of Health Services | Contractor                              |
|--|---|
| Jerry D. Stanger                         | Section or Unit Name (TBD)              |
| Department of Health Care Services       | Attention: (To be determined)           |
| Payment Systems Division                 | Street address and room number (TBD)    |
| MS 4700                                  | P.O. Box Number (To be determined)      |
| P.O. Box 997413                          | City, State Zip Code (To be determined) |
| Sacramento, CA 95899-7413                | Telephone: (XXX) XXX-XXXX               |
| Telephone: (916) 319-8010                | Fax: (XXX) XXX-XXXX                     |
| Fax: (916) 319-8010                      |   |

Either party may make changes to the information above by giving written notice to the other party. Said changes shall not require an amendment to this agreement.

**Exhibit A**  
**Scope of Work**

**5. Services to be Performed**

The following list of services is not intended to be definitive or exhaustive. The intent of the following list is to characterize the type of services that CDHS expects to be delivered under this contract.

- A. Develop, implement and maintain a project plan that outlines the tasks associated with the MMIS components of the procurement process with a report of the progress related to each task i.e., completion of the task, a breakdown of the logical flow of each task to be completed and a reasonable account of the time needed to complete the task .
- B. As it relates to timelines and deadlines on the project, prepare reports and document the progress and status reports throughout the procurement emphasizing the progress of the project. As appropriate, meet with involved CDHS staff on the procurement project to review the progress of the project plan and to ensure that any outstanding issues or concerns are addressed.
- C. Provide assistance during the next CA-MMIS Fiscal Intermediary Request for Proposal ("FI-RFP") procurement process by providing professional and technical consultation services including advice on procurement strategies specifically related to the acquisition of a Medicaid fiscal Agent.
- D. Provide guidance as it relates to recent procurement experiences in order to assist the Department in learning about the latest advancements and potential innovations in claims processing and reporting systems.
- E. Develop language to assure that the requirements outlined for responding to the FI-RFP are clearly defined encouraging free and open competition. This includes providing guidelines and criteria for submission requirements and evaluation measurements that must provide for a fair and thorough evaluation for take over of the current system and implementation of a replacement system
- F. Provide advice, based on experience, on how to structure the allowable costs for a contract of this type to assure reasonable and cost effective pricing not only for the current system processes but for the replacement system processes. This should include expert advice and recommendations based on previous experience on how to structure incentives for the contractor to take action to reduce future costs to CDHS and how to structure the implementation and ongoing costs to an hourly rate for future enhancements. Proposed approaches should assure neutrality of language and concepts to enhance the understandability of the FI-RFP to vendors who have not done business with California in the past. This should include advice regarding methodologies for assuring a "level playing field" can be achieved in bidding for the non-incumbent.
- G. Conduct interviews and facilitate working sessions with Department staff for the purposes of gathering information for the FI-RFP. This may include the use of information acquired from any business and policy extraction processes that are available, as well as developing a strategy for defining/displaying current medical policy in the MMIS.

## **Exhibit A Scope of Work**

- H. Prepare reports that will identify potential risks for the Department based on the Contractor's experience and knowledge regarding other States implementation of a new MMIS.
- I. Define and perform a needs assessment based on the current State practices/processes in order to develop FI-RFP Scope of Work (SOW) language that incorporates changes from contract amendments, change orders, and enhancements that have occurred during the current contract and will become a part of the new FI contract.
- J. Develop FI-RFP SOW language that allows for a take over of the existing MMIS followed by development and a migration to a replacement MMIS. This SOW language must include at a minimum:
  - 1) Requirements for an implementation schedule;
  - 2) Processes for review of design documents;
  - 3) Processes to assure appropriate training;
  - 4) Processes for user acceptance testing, parallel testing; volume testing and
  - 5) Processes for resolution of issues in order to obtain final approval for implementation and federal certification of the new system.
- K. Assist in facilitation of the bidder's conference by working with the Office of Medi-Cal Procurement (OMCP) and to develop responses to vendors' questions, and if necessary, prepare amendments to the RFP.
- L. Participate as needed in high-level management meetings/committees to discuss status, outstanding issues and/or concerns.

### **6. Review Time**

The Department shall have ten (10) State Workdays to review each deliverable, milestone or revision of a deliverable after its submission by the Contractor. For each day the Contractor is late submitting a specific deliverable, or revised deliverable, the Department shall be permitted two (2) additional State Workdays to review the deliverable. The Contractor shall allow for these turnaround times in its Takeover Work Plan for implementing or performing required Takeover activities and shall assume that the Department will require corrections or revisions to each deliverable. The Contractor shall have ten (10) State Workdays to make revisions to correct unaccepted deliverables.

**Exhibit B**  
**Budget Detail and Payment Provisions**

**1. Invoicing and Payment**

- A. For Deliverables satisfactorily rendered according to the scope of work and the terms, conditions,, and exhibits of this agreement, and upon receipt and approval of the invoices, the CDHS agrees to compensate the Contractor for a fixed price basis in accordance with the payment/deliverable schedule herein.
- B. Invoices shall include the Agreement Number and shall be submitted in triplicate (one (1) copy with original signature, one (1) paper copy, and one (1) electronic copy) in accordance with the Deliverable Fee Schedule in this exhibit to:

California Department of Health Services  
Headquarters Management Branch  
Payment Systems Division  
Attn: Mr. Jerry Stanger  
MS 4700, P.O. Box 997413  
Sacramento, CA 95899-7413

The State, at its discretion, may designate an alternate invoice submission address. A change in the invoice address shall be accomplished via a written notice to the Contractor by the State and shall not require an amendment to this Agreement.

- C. Invoices shall:
  - 1) Be prepared on company letterhead. If invoices are not on produced letterhead, invoices must be signed by an authorized official, employee or agent certifying that the expenditures claimed represent actual expenses for the service performed under this contract.
  - 2) Bear the Contractor's name as shown on the agreement.
  - 3) Identify the billing and/or performance period covered by the invoice.
  - 4) Identify the specific deliverables supplied for the billing period in the same or greater level of detail as indicated in this agreement. Subject to the terms of this agreement, reimbursement may only be sought for those costs and/or cost categories expressly identified as allowable in this agreement and approved by CDHS.
  - 5) Identify the actual completion date of the specific deliverables and the associated payment amount.
  - 6) Include the documentation to support that the deliverable has been accepted by the CDHS.

**D. Deliverable Schedule**

The CDHS will pay the Contractor one (1) fixed all-inclusive cost following the submission and acceptance of each required deliverables listed below. These deliverables must incorporate all components associated with the work

**Exhibit B**  
**Budget Detail and Payment Provisions**

to be performed in Exhibit A, Scope of Work, Section 5, Services to be Performed.

| Deliverables |  | Bid Price |
|--------------|--|-----------|
| 1            | Upon the completion and acceptance of the Work Plan for completing the draft FI RFP components assigned. Deliverable must be officially approved in writing by CDHS.   |           |
| 2            | Upon the completion and acceptance of language for the incorporation into the draft FI RFP SOW, payment provisions, and other contract areas including all amendments, enhancements, change orders, and improvements for the takeover of the existing CA-MMIS. Deliverable must be officially approved In writing by CDHS. |           |
| 3            | Upon the completion and acceptance of language for the SOW for the draft FI RFP the schedule for the design, development implementation, payment provisions and other contract areas of the contract for the replacement CA-MMIS. Deliverable must be officially approved in writing by CDHS.                              |           |
| 4            | Upon the completion and acceptance of the development of submission requirements, evaluation criteria, and cost proposal pricing methodologies. Deliverable must be officially approved in writing by CDHS.  |           |
| 5            | Upon the completion and acceptance of the responses developed for the Questions and Answers period. This will include the development of RFP addenda required as a result of the responses developed. All products must be officially approved in writing by CDHS.   |           |
| <b>Total</b> |  |           |

**2. Budget Contingency Clause**

- A. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for this program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.
- B. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this Agreement, the State shall have the option to either cancel

**Exhibit B**  
**Budget Detail and Payment Provisions**

this Agreement with no liability occurring to the State, or offer an agreement amendment to Contractor to reflect the reduced amount.

**3. Amounts Payable**

- A. The amounts payable under this agreement shall not exceed:
  - 1) \$\_\_\_\_\_ for the budget period of 08/01/07 through 06/30/08.
  - 2) \$\_\_\_\_\_ for the budget period of 09/01/08 through 1/31/09
- B. Reimbursement shall be made for allowable expenses up to the amount annually encumbered commensurate with the state fiscal year in which services are performed and/or goods are received.
- C. The Contractor must maintain records of actual expenditures for each state fiscal year covered by the term of this agreement.
- D. The Contractor shall be subject to CDHS review or audit upon written notice with no limitation to the access of records and files.

**4. Timely Submission of Final Invoice**

- A. A final undisputed invoice shall be submitted for payment no more than ninety (90) calendar days following the expiration or termination date of this agreement, unless a later or alternate deadline is agreed to in writing by the program contract manager. Said invoice should be clearly marked "Final Invoice", thus indicating that all payment obligations of the State under this Agreement have ceased and that no further payments are due or outstanding.
- B. The State may, at its discretion, choose not to honor any delinquent final invoice if the Contractor fails to obtain prior written State approval of an alternate final invoice submission deadline. Written State approval shall be sought from the program contract manager prior to the expiration or termination date of this agreement.
- C. The Contractor is hereby advised of its obligation to submit, with the final invoice, a "**Contractor's Release (Exhibit F)**" acknowledging submission of the final invoice to the State and certifying the approximate percentage amount, if any, of recycled products used in performance of this agreement.

**5. Progress Payment Withholds**

- A. This provision replaces and supersedes provision 22 of Exhibit D(F).
- B. Progress payments may not be made more frequently than monthly in arrears for work performed in the performance of the agreement. In the aggregate, progress payments may not exceed 90 percent of the total agreement amount, regardless of agreement length.

**Exhibit B**  
**Budget Detail and Payment Provisions**

C. Ten percent (10%) may be withheld by CDHS from each invoice submitted for reimbursement, under the following conditions:

- 1) For services and costs associated with contractor and/or subcontractor performance that is considered to be of an ongoing nature or performed continuously throughout the term of the agreement.
- 2) For individual services associated with a specific agreement deliverable that have not yet been received or completed in their entirety.
- 3) For individual and/or distinct tasks, work plans, or project activities that have not yet been completed in their entirety.

D. Release of Amounts Withheld

As individuals and/or distinct tasks, services, work plans, or project activities are completed in their entirety by either the Contractor or Subcontractor and any scheduled/required deliverables or reports are delivered to CDHS; then any funds so withheld may be released to the Contractor upon acceptance and /or acknowledgement that all such items have been completed to the full satisfaction of CDHS.



Contractor's Name  
XX-XXXXX

**Exhibit C**  
General Terms and Conditions

**This page is a place holder for Exhibit C.**

The State's General Terms and Conditions (GTC 307) can only be viewed or downloaded from the following Internet site: <http://www.ols.dgs.ca.gov/Standard+Language/default.htm>.

The State's General Terms and Conditions are modified from time to time by the California Department of General Services to comply with changes to federal or state law and the version that applies to the resulting agreement is determined based on the contract start date. CDHS reserves the right to place into the resulting agreement a more current GTC version, when applicable.

If a bidding firm does not have Internet access they are to contact the program identified in the bid cover letter to request a hard or paper copy of the State's General Term and Conditions.

### Special Terms and Conditions

*(For federally funded service contracts and grant awards)*

The use of headings or titles throughout this exhibit is for convenience only and shall not be used to interpret or to govern the meaning of any specific term or condition. The terms "contract", "Contractor" and "Subcontractor" shall also mean, "grant", "Grantee" and "Subgrantee" respectively.

This exhibit contains provisions that require strict adherence to various contracting laws and policies. Some provisions herein are conditional and only apply if specified conditions exist (i.e., agreement total exceeds a certain amount, agreement is federally funded, etc.). The provisions herein apply to this agreement unless the provisions are removed by reference on the face of the agreement, the provisions are superseded by an alternate provision appearing elsewhere in the agreement, or the applicable conditions do not exist.

### Index of Special Terms and Conditions

|   |   |
|---|---|
| 1. Federal Equal Employment Opportunity Requirements              | 17. Human Subjects Use Requirements                     |
| 2. Travel and Per Diem Reimbursement                              | 18. Novation Requirements                               |
| 3. Procurement Rules  | 19. Debarment and Suspension Certification              |
| 4. Equipment Ownership / Inventory / Disposition                  | 20. Smoke-Free Workplace Certification                  |
| 5. Subcontract Requirements                                       | 21. Covenant Against Contingent Fees                    |
| 6. Income Restrictions  | 22. Payment Withholds                                   |
| 7. Audit and Record Retention                                     | 23. Performance Evaluation                              |
| 8. Site Inspection  | 24. Officials Not to Benefit                            |
| 9. Federal Contract Funds   | 25. Four-Digit Date Compliance                          |
| 10. Intellectual Property Rights                                  | 26. Prohibited Use of State Funds for Software          |
| 11. Air or Water Pollution Requirements                           | 27. Use of Small, Minority Owned and Women's Businesses |
| 12. Prior Approval of Training Seminars, Workshops or Conferences | 28. Alien Ineligibility Certification                   |
| 13. Confidentiality of Information                                | 29. Union Organizing                                    |
| 14. Documents, Publications, and Written Reports                  | 30. Contract Uniformity (Fringe Benefit Allowability)   |
| 15. Dispute Resolution Process                                    | 31. Lobbying Restrictions and Disclosure Certification  |
| 16. Financial and Compliance Audit Requirements                   |   |

## 1. Federal Equal Opportunity Requirements

(Applicable to all federally funded agreements entered into by the California Department of Health Services (CDHS).)

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. The Contractor will take affirmative action to ensure that qualified applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and career development opportunities and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Federal Government or CDHS, setting forth the provisions of the Equal Opportunity clause, Section 503 of the Rehabilitation Act of 1973 and the affirmative action clause required by the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212). Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified applicants without discrimination based on their race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era and the rights of applicants and employees.
- b. The Contractor will, in all solicitations or advancements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era.
- c. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice, to be provided by the Federal Government or the State, advising the labor union or workers' representative of the Contractor's commitments under the provisions herein and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. The Contractor will comply with all provisions of and furnish all information and reports required by Section 503 of the Rehabilitation Act of 1973, as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212) and of the Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and of the rules, regulations, and relevant orders of the Secretary of Labor.
- e. The Contractor will furnish all information and reports required by Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and the Rehabilitation Act of 1973, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the State and its designated representatives and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- f. In the event of the Contractor's noncompliance with the requirements of the provisions herein or with any federal rules, regulations, or orders which are referenced herein, this agreement may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further federal and state contracts in accordance with procedures authorized in Federal Executive Order No. 11246 as amended and such other sanctions may be imposed and remedies invoked as provided in Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal

Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- g. The Contractor will include the provisions of Paragraphs a through g in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Federal Executive Order No. 11246 as amended, including by Executive Order 11375, ‘Amending Executive Order 11246 Relating to Equal Employment Opportunity,’ and as supplemented by regulation at 41 CFR part 60, “Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” or Section 503 of the Rehabilitation Act of 1973 or (38 U.S.C. 4212) of the Vietnam Era Veteran's Readjustment Assistance Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs or CDHS may direct as a means of enforcing such provisions including sanctions for noncompliance provided, however, that in the event the Contractor becomes involved in, or is threatened with litigation by a subcontractor or vendor as a result of such direction by CDHS, the Contractor may request in writing to CDHS, who, in turn, may request the United States to enter into such litigation to protect the interests of the State and of the United States.

## 2. Travel and Per Diem Reimbursement

(Applicable if travel and/or per diem expenses are reimbursed with contract funds.)

Reimbursement for travel and per diem expenses from CDHS under this agreement shall, unless otherwise specified in this agreement, be at the rates currently in effect, as established by the California Department of Personnel Administration (DPA), for nonrepresented state employees as stipulated in CDHS' Travel Reimbursement Information Exhibit. If the DPA rates change during the term of the agreement, the new rates shall apply upon their effective date and no amendment to this agreement shall be necessary. Exceptions to DPA rates may be approved by CDHS upon the submission of a statement by the Contractor indicating that such rates are not available to the Contractor. No travel outside the State of California shall be reimbursed without prior authorization from CDHS. Verbal authorization should be confirmed in writing. Written authorization may be in a form including fax or email confirmation.

## 3. Procurement Rules

(Applicable to all agreements in which equipment, miscellaneous property, commodities and/or supplies are furnished by CDHS or expenses for said items are reimbursed with state or federal funds.)

### a. Equipment definitions

Wherever the term equipment and/or miscellaneous property is used, the following definitions shall apply:

- (1) **Major equipment:** A tangible or intangible item having a base unit cost of **\$5,000 or more** with a life expectancy of one (1) year or more and is either furnished by CDHS or the cost is reimbursed through this agreement. Software and videos are examples of intangible items that meet this definition.
- (2) **Minor equipment:** A tangible item having a base unit cost of **less than \$5,000** with a life expectancy of one (1) year or more that is listed on the CDHS Asset Management Unit's Minor Equipment List and is either furnished by CDHS or the cost is reimbursed through this agreement. Contractors may obtain a copy of the Minor Equipment List by making a request through the CDHS program contract manager.
- (3) **Miscellaneous property:** A specific tangible item with a life expectancy of one (1) year or more that is either furnished by CDHS or the cost is reimbursed through this agreement. Examples include, but are not limited to: furniture (excluding modular furniture), cabinets, typewriters, desktop calculators, portable dictators, non-digital cameras, etc.

b. **Government and public entities** (including state colleges/universities and auxiliary organizations), whether acting as a contractor and/or subcontractor, may secure all commodities, supplies, equipment and services related to such purchases that are required in performance of this agreement. Said procurements are subject to Paragraphs d through h of Provision 3. Paragraph c of Provision 3 shall also apply, if equipment purchases are delegated to subcontractors that are nonprofit organizations or commercial businesses.

c. **Nonprofit organizations and commercial businesses**, whether acting as a contractor and/or subcontractor, may secure commodities, supplies, equipment and services related to such purchases for performance under this agreement.

(1) Equipment purchases shall not exceed \$50,000 annually.

To secure equipment above the annual maximum limit of \$50,000, the Contractor shall make arrangements through the appropriate CDHS program contract manager, to have all remaining equipment purchased through CDHS' Purchasing Unit. The cost of equipment purchased by or through CDHS shall be deducted from the funds available in this agreement. Contractor shall submit to the CDHS program contract manager a list of equipment specifications for those items that the State must procure. The State may pay the vendor directly for such arranged equipment purchases and title to the equipment will remain with CDHS. The equipment will be delivered to the Contractor's address, as stated on the face of the agreement, unless the Contractor notifies the CDHS program contract manager, in writing, of an alternate delivery address.

(2) All equipment purchases are subject to Paragraphs d through h of Provision 3. Paragraph b of Provision 3 shall also apply, if equipment purchases are delegated to subcontractors that are either a government or public entity.

(3) Nonprofit organizations and commercial businesses, shall use a procurement system that meets the following standards:

(a) Maintain a code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in awarding procurement contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a procurement contract in which, to his or her knowledge, he or she has a financial interest.

(b) Procurements shall be conducted in a manner that provides, to the maximum extent practical, open, and free competition.

(c) Procurements shall be conducted in a manner that provides for all of the following:

[1] Avoid purchasing unnecessary or duplicate items.

[2] Equipment solicitations shall be based upon a clear and accurate description of the technical requirements of the goods to be procured.

[3] Take positive steps to utilize small and veteran owned businesses.

d. Unless waived or otherwise stipulated in writing by CDHS, prior written authorization from the appropriate CDHS program contract manager will be required before the Contractor will be reimbursed for any purchase of \$5,000 or more for commodities, supplies, equipment, and services related to such purchases. The Contractor must provide in its request for authorization all particulars necessary, as specified by CDHS, for evaluating the necessity or desirability of incurring such costs. The term "purchase" excludes the purchase of services from a subcontractor and public utility services at rates established for uniform applicability to the general public.

e. In special circumstances, determined by CDHS (e.g., when CDHS has a need to monitor certain purchases, etc.), CDHS may require prior written authorization and/or the submission of paid vendor receipts for any purchase, regardless of dollar amount. CDHS reserves the right to either deny claims for reimbursement or to request repayment for any Contractor and/or subcontractor

purchase that CDHS determines to be unnecessary in carrying out performance under this agreement.

- f. The Contractor and/or subcontractor must maintain a copy or narrative description of the procurement system, guidelines, rules, or regulations that will be used to make purchases under this agreement. The State reserves the right to request a copy of these documents and to inspect the purchasing practices of the Contractor and/or subcontractor at any time.
- g. For all purchases, the Contractor and/or subcontractor must maintain copies of all paid vendor invoices, documents, bids and other information used in vendor selection, for inspection or audit. Justifications supporting the absence of bidding (i.e., sole source purchases) shall also be maintained on file by the Contractor and/or subcontractor for inspection or audit.
- h. CDHS may, with cause (e.g., with reasonable suspicion of unnecessary purchases or use of inappropriate purchase practices, etc.), withhold, cancel, modify, or retract the delegated purchase authority granted under Paragraphs b and/or c of Provision 3 by giving the Contractor no less than 30 calendar days written notice.

#### **4. Equipment Ownership / Inventory / Disposition**

(Applicable to agreements in which equipment and/or miscellaneous property is furnished by CDHS and/or when said items are purchased or reimbursed with state or federal funds.)

- a. Wherever the term equipment and/or miscellaneous property is used in Provision 4, the definitions in Provision 3, Paragraph a shall apply.

Unless otherwise stipulated in this agreement, all equipment and/or miscellaneous property that are purchased/reimbursed with agreement funds or furnished by CDHS under the terms of this agreement shall be considered state equipment and the property of CDHS.

- (1) CDHS requires the reporting, tagging and annual inventorying of all equipment and/or miscellaneous property that is furnished by CDHS or purchased/reimbursed with funds provided through this agreement.

Upon receipt of equipment and/or miscellaneous property, the Contractor shall report the receipt to the CDHS program contract manager. To report the receipt of said items and to receive property tags, Contractor shall use a form or format designated by CDHS' Asset Management Unit. If the appropriate form (i.e., Contractor Equipment Purchased with CDHS Funds) does not accompany this agreement, Contractor shall request a copy from the CDHS program contract manager.

- (2) If the Contractor enters into an agreement with a term of more than twelve months, the Contractor shall submit an annual inventory of state equipment and/or miscellaneous property to the CDHS program contract manager using a form or format designated by CDHS' Asset Management Unit. If an inventory report form (i.e., Inventory/Disposition of CDHS-Funded Equipment) does not accompany this agreement, Contractor shall request a copy from the CDHS program contract manager. Contractor shall:

- (a) Include in the inventory report, equipment and/or miscellaneous property in the Contractor's possession and/or in the possession of a subcontractor (including independent consultants).
- (b) Submit the inventory report to CDHS according to the instructions appearing on the inventory form or issued by the CDHS program contract manager.
- (c) Contact the CDHS program contract manager to learn how to remove, trade-in, sell, transfer or survey off, from the inventory report, expired equipment and/or miscellaneous property that is no longer wanted, usable or has passed its life expectancy. Instructions will be supplied by CDHS' Asset Management Unit.

- b. Title to state equipment and/or miscellaneous property shall not be affected by its incorporation

or attachment to any property not owned by the State.

- c. Unless otherwise stipulated, CDHS shall be under no obligation to pay the cost of restoration, or rehabilitation of the Contractor's and/or Subcontractor's facility which may be affected by the removal of any state equipment and/or miscellaneous property.
- d. The Contractor and/or Subcontractor shall maintain and administer a sound business program for ensuring the proper use, maintenance, repair, protection, insurance and preservation of state equipment and/or miscellaneous property.
  - (1) In administering this provision, CDHS may require the Contractor and/or Subcontractor to repair or replace, to CDHS' satisfaction, any damaged, lost or stolen state equipment and/or miscellaneous property. Contractor and/or Subcontractor shall immediately file a theft report with the appropriate police agency or the California Highway Patrol and Contractor shall promptly submit one copy of the theft report to the CDHS program contract manager.
- e. Unless otherwise stipulated by the program funding this agreement, equipment and/or miscellaneous property purchased/reimbursed with agreement funds or furnished by CDHS under the terms of this agreement, shall only be used for performance of this agreement or another CDHS agreement.
- f. Within sixty (60) calendar days prior to the termination or end of this agreement, the Contractor shall provide a final inventory report of equipment and/or miscellaneous property to the CDHS program contract manager and shall, at that time, query CDHS as to the requirements, including the manner and method, of returning state equipment and/or miscellaneous property to CDHS. Final disposition of equipment and/or miscellaneous property shall be at CDHS expense and according to CDHS instructions. Equipment and/or miscellaneous property disposition instructions shall be issued by CDHS immediately after receipt of the final inventory report. At the termination or conclusion of this agreement, CDHS may at its discretion, authorize the continued use of state equipment and/or miscellaneous property for performance of work under a different CDHS agreement.
- g. **Motor Vehicles**

(Applicable only if motor vehicles are purchased/reimbursed with agreement funds or furnished by CDHS under this agreement.)

- (1) If motor vehicles are purchased/reimbursed with agreement funds or furnished by CDHS under the terms of this agreement, within thirty (30) calendar days prior to the termination or end of this agreement, the Contractor and/or Subcontractor shall return such vehicles to CDHS and shall deliver all necessary documents of title or registration to enable the proper transfer of a marketable title to CDHS.
- (2) If motor vehicles are purchased/reimbursed with agreement funds or furnished by CDHS under the terms of this agreement, the State of California shall be the legal owner of said motor vehicles and the Contractor shall be the registered owner. The Contractor and/or a subcontractor may only use said vehicles for performance and under the terms of this agreement.
- (3) The Contractor and/or Subcontractor agree that all operators of motor vehicles, purchased/reimbursed with agreement funds or furnished by CDHS under the terms of this agreement, shall hold a valid State of California driver's license. In the event that ten or more passengers are to be transported in any one vehicle, the operator shall also hold a State of California Class B driver's license.
- (4) If any motor vehicle is purchased/reimbursed with agreement funds or furnished by CDHS under the terms of this agreement, the Contractor and/or Subcontractor, as applicable, shall provide, maintain, and certify that, at a minimum, the following type and amount of automobile liability insurance is in effect during the term of this agreement or any period of contract extension during which any vehicle remains in the Contractor's and/or Subcontractor's possession:

**Automobile Liability Insurance**

- (a) The Contractor, by signing this agreement, hereby certifies that it possesses or will obtain automobile liability insurance in the amount of \$1,000,000 per occurrence for bodily injury and property damage combined. Said insurance must be obtained and made effective upon the delivery date of any motor vehicle, purchased/reimbursed with agreement funds or furnished by CDHS under the terms of this agreement, to the Contractor and/or Subcontractor.
- (b) The Contractor and/or Subcontractor shall, as soon as practical, furnish a copy of the certificate of insurance to the CDHS program contract manager.
- (c) The Contractor and/or Subcontractor agree that bodily injury and property damage liability insurance, as required herein, shall remain in effect at all times during the term of this agreement or until such time as the motor vehicle is returned to CDHS.
- (d) The Contractor and/or Subcontractor agree to provide, at least thirty (30) days prior to the expiration date of said insurance coverage, a copy of a new certificate of insurance evidencing continued coverage, as indicated herein, for not less than the remainder of the term of this agreement, the term of any extension or continuation thereof, or for a period of not less than one (1) year.
- (e) The Contractor and/or Subcontractor, if not a self-insured government and/or public entity, must provide evidence, that any required certificates of insurance contain the following provisions:
  - [1] The insurer will not cancel the insured's coverage without giving thirty (30) calendar days prior written notice to the State (California Department of Health Services).
  - [2] The State of California, its officers, agents, employees, and servants are included as additional insureds, but only with respect to work performed for the State under this agreement and any extension or continuation of this agreement.
  - [3] The insurance carrier shall notify the California Department of Health Services (CDHS), in writing, of the Contractor's failure to pay premiums; its cancellation of such policies; or any other substantial change, including, but not limited to, the status, coverage, or scope of the required insurance. Such notices shall contain a reference to the agreement number for which the insurance was obtained.
- (f) The Contractor and/or Subcontractor is hereby advised that copies of certificates of insurance may be subject to review and approval by the Department of General Services (DGS), Office of Risk and Insurance Management. The Contractor shall be notified by CDHS, in writing, if this provision is applicable to this agreement. If DGS approval of the certificate of insurance is required, the Contractor agrees that no work or services shall be performed prior to obtaining said approval.
- (g) In the event the Contractor and/or Subcontractor fails to keep insurance coverage, as required herein, in effect at all times during vehicle possession, CDHS may, in addition to any other remedies it may have, terminate this agreement upon the occurrence of such event.

**5. Subcontract Requirements**

(Applicable to agreements under which services are to be performed by subcontractors including independent consultants.)

- a. Prior written authorization will be required before the Contractor enters into or is reimbursed for any subcontract for services costing \$5,000 or more. Except as indicated in Paragraph a(3) herein, when securing subcontracts for services exceeding \$5,000, the Contractor shall obtain at least three bids or justify a sole source award.



- (1) The Contractor must provide in its request for authorization, all information necessary for evaluating the necessity or desirability of incurring such cost.
- (2) The State may identify the information needed to fulfill this requirement.
- (3) Subcontracts performed by the following entities or for the service types listed below are exempt from the bidding and sole source justification requirements:
  - (a) A local governmental entity or the federal government,
  - (b) A State college or university from any State,
  - (c) A Joint Powers Authority,
  - (d) An auxiliary organization of a California State University or a California community college,
  - (e) A foundation organized to support the Board of Governors of the California Community Colleges,
  - (f) An auxiliary organization of the Student Aid Commission established under Education Code § 69522,
  - (g) Entities of any type that will provide subvention aid or direct services to the public,
  - (h) Entities and/or service types identified as exempt from advertising in State Administrative Manual Section 1233 subsection 3. View this publication at the following Internet address: <http://sam.dgs.ca.gov>.
- b. CDHS reserves the right to approve or disapprove the selection of subcontractors and with advance written notice, require the substitution of subcontractors and require the Contractor to terminate subcontracts entered into in support of this agreement.
  - (1) Upon receipt of a written notice from CDHS requiring the substitution and/or termination of a subcontract, the Contractor shall take steps to ensure the completion of any work in progress and select a replacement, if applicable, within 30 calendar days, unless a longer period is agreed to by CDHS.
- c. Actual subcontracts (i.e., written agreement between the Contractor and a subcontractor) of \$5,000 or more are subject to the prior review and written approval of CDHS. CDHS may, at its discretion, elect to waive this right. All such waivers shall be confirmed in writing by CDHS.
- d. Contractor shall maintain a copy of each subcontract entered into in support of this agreement and shall, upon request by CDHS, make copies available for approval, inspection, or audit.
- e. CDHS assumes no responsibility for the payment of subcontractors used in the performance of the agreement. Contractor accepts sole responsibility for the payment of subcontractors used in the performance of this agreement.
- f. The Contractor is responsible for all performance requirements under this agreement even though performance may be carried out through a subcontract.
- g. The Contractor shall ensure that all subcontracts for services include provision(s) requiring compliance with applicable terms and conditions specified in this agreement.
- h. The Contractor agrees to include the following clause, relevant to record retention, in all subcontracts for services:

"(Subcontractor Name) agrees to maintain and preserve, until three years after termination of (Agreement Number) and final payment from CDHS to the Contractor, to permit CDHS or any duly authorized representative, to have access to, examine or audit any pertinent books, documents, papers and records related to this subcontract and to allow interviews of any employees who might reasonably have information related to such records."
- i. Unless otherwise stipulated in writing by CDHS, the Contractor shall be the subcontractor's sole point of contact for all matters related to performance and payment under this agreement.

- j. Contractor shall, as applicable, advise all subcontractors of their obligations pursuant to the following numbered provisions of this Exhibit: 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 17, 19, 20, 24, and 32.

## 6. Income Restrictions

Unless otherwise stipulated in this agreement, the Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor under this agreement shall be paid by the Contractor to CDHS, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by CDHS under this agreement.

## 7. Audit and Record Retention

(Applicable to agreements in excess of \$10,000.)

- a. The Contractor and/or Subcontractor shall maintain books, records, documents, and other evidence, accounting procedures and practices, sufficient to properly reflect all direct and indirect costs of whatever nature claimed to have been incurred in the performance of this agreement, including any matching costs and expenses. The foregoing constitutes "records" for the purpose of this provision.
- b. The Contractor's and/or subcontractor's facility or office or such part thereof as may be engaged in the performance of this agreement and his/her records shall be subject at all reasonable times to inspection, audit, and reproduction.
- c. Contractor agrees that CDHS, the Department of General Services, the Bureau of State Audits, or their designated representatives including the Comptroller General of the United States shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this agreement. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this agreement. (GC 8546.7, CCR Title 2, Section 1896).
- d. The Contractor and/or Subcontractor shall preserve and make available his/her records (1) for a period of three years from the date of final payment under this agreement, and (2) for such longer period, if any, as is required by applicable statute, by any other provision of this agreement, or by subparagraphs (1) or (2) below.
  - (1) If this agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of three years from the date of any resulting final settlement.
  - (2) If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the three-year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later.
- e. The Contractor and/or Subcontractor shall comply with the above requirements and be aware of the penalties for violations of fraud and for obstruction of investigation as set forth in Public Contract Code § 10115.10, if applicable.
- f. The Contractor and/or Subcontractor may, at its discretion, following receipt of final payment under this agreement, reduce its accounts, books and records related to this agreement to microfilm, computer disk, CD ROM, or other data storage medium. Upon request by an authorized representative to inspect, audit or obtain copies of said records, the Contractor and/or Subcontractor must supply or make available applicable devices, hardware, and/or software necessary to view, copy and/or print said records. Applicable devices may include, but are not limited to, microfilm readers and microfilm printers, etc.

## 8. Site Inspection

The State, through any authorized representatives, has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder including subcontract supported activities and the premises in which it is being performed. If any inspection or evaluation is made of the premises of the Contractor or Subcontractor, the Contractor shall provide and shall require Subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the authorized representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

## 9. Federal Contract Funds

(Applicable only to that portion of an agreement funded in part or whole with federal funds.)

- a. It is mutually understood between the parties that this agreement may have been written before ascertaining the availability of congressional appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the agreement were executed after that determination was made.
- b. This agreement is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the fiscal years covered by the term of this agreement. In addition, this agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress which may affect the provisions, terms or funding of this agreement in any manner.
- c. It is mutually agreed that if the Congress does not appropriate sufficient funds for the program, this agreement shall be amended to reflect any reduction in funds.
- d. CDHS has the option to invalidate or cancel the agreement with 30-days advance written notice or to amend the agreement to reflect any reduction in funds.

## 10. Intellectual Property Rights

### a. Ownership

- (1) Except where CDHS has agreed in a signed writing to accept a license, CDHS shall be and remain, without additional compensation, the sole owner of any and all rights, title and interest in all Intellectual Property, from the moment of creation, whether or not jointly conceived, that are made, conceived, derived from, or reduced to practice by Contractor or CDHS and which result directly or indirectly from this agreement.
- (2) For the purposes of this agreement, Intellectual Property means recognized protectable rights and interest such as: patents, (whether or not issued) copyrights, trademarks, service marks, applications for any of the foregoing, inventions, trade secrets, trade dress, logos, insignia, color combinations, slogans, moral rights, right of publicity, author's rights, contract and licensing rights, works, mask works, industrial design rights, rights of priority, know how, design flows, methodologies, devices, business processes, developments, innovations, good will and all other legal rights protecting intangible proprietary information as may exist now and/or here after come into existence, and all renewals and extensions, regardless of whether those rights arise under the laws of the United States, or any other state, country or jurisdiction.
  - (a) For the purposes of the definition of Intellectual Property, "works" means all literary works, writings and printed matter including the medium by which they are recorded or reproduced, photographs, art work, pictorial and graphic representations and works of a similar nature, film, motion pictures, digital images, animation cells, and other audiovisual works including positives and negatives thereof, sound recordings, tapes, educational materials, interactive videos and any other materials or products created, produced, conceptualized and fixed in a tangible medium of expression. It includes preliminary and final products and any materials and information developed for the purposes of producing

those final products. Works does not include articles submitted to peer review or reference journals or independent research projects.

- (3) In the performance of this agreement, Contractor will exercise and utilize certain of its Intellectual Property in existence prior to the effective date of this agreement. In addition, under this agreement, Contractor may access and utilize certain of CDHS' Intellectual Property in existence prior to the effective date of this agreement. Except as otherwise set forth herein, Contractor shall not use any of CDHS' Intellectual Property now existing or hereafter existing for any purposes without the prior written permission of CDHS. **Except as otherwise set forth herein, neither the Contractor nor CDHS shall give any ownership interest in or rights to its Intellectual Property to the other Party.** If during the term of this agreement, Contractor accesses any third-party Intellectual Property that is licensed to CDHS, Contractor agrees to abide by all license and confidentiality restrictions applicable to CDHS in the third-party's license agreement.
- (4) Contractor agrees to cooperate with CDHS in establishing or maintaining CDHS' exclusive rights in the Intellectual Property, and in assuring CDHS' sole rights against third parties with respect to the Intellectual Property. If the Contractor enters into any agreements or subcontracts with other parties in order to perform this agreement, Contractor shall require the terms of the agreement(s) to include all Intellectual Property provisions. Such terms must include, but are not limited to, the subcontractor assigning and agreeing to assign to CDHS all rights, title and interest in Intellectual Property made, conceived, derived from, or reduced to practice by the subcontractor, Contractor or CDHS and which result directly or indirectly from this agreement or any subcontract.
- (5) Contractor further agrees to assist and cooperate with CDHS in all reasonable respects, and execute all documents and, subject to reasonable availability, give testimony and take all further acts reasonably necessary to acquire, transfer, maintain, and enforce CDHS' Intellectual Property rights and interests.

**b. Retained Rights / License Rights**

- (1) Except for Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDHS and which result directly or indirectly from this agreement, Contractor shall retain title to all of its Intellectual Property to the extent such Intellectual Property is in existence prior to the effective date of this agreement. Contractor hereby grants to CDHS, without additional compensation, a permanent, non-exclusive, royalty free, paid-up, worldwide, irrevocable, perpetual, non-terminable license to use, reproduce, manufacture, sell, offer to sell, import, export, modify, publicly and privately display/perform, distribute, and dispose Contractor's Intellectual Property with the right to sublicense through multiple layers, for any purpose whatsoever, to the extent it is incorporated in the Intellectual Property resulting from this agreement, unless Contractor assigns all rights, title and interest in the Intellectual Property as set forth herein.
- (2) Nothing in this provision shall restrict, limit, or otherwise prevent Contractor from using any ideas, concepts, know-how, methodology or techniques related to its performance under this agreement, provided that Contractor's use does not infringe the patent, copyright, trademark rights, license or other Intellectual Property rights of CDHS or third party, or result in a breach or default of any provisions of this Exhibit or result in a breach of any provisions of law relating to confidentiality.

**c. Copyright**

- (1) Contractor agrees that for purposes of copyright law, all works [as defined in Section a, subparagraph (2)(a) of this provision] of authorship made by or on behalf of Contractor in connection with Contractor's performance of this agreement shall be deemed "works made for hire". Contractor further agrees that the work of each person utilized by Contractor in connection with the performance of this agreement will be a "work made for hire," whether that person is an employee of Contractor or that person has entered into an agreement with Contractor to perform the work. Contractor shall enter into a written agreement with any such person that: (i) all work performed for Contractor shall be deemed a "work made for hire" under the Copyright Act and (ii) that person shall assign all right, title, and interest to CDHS to any work product made, conceived, derived from, or reduced to practice by Contractor or CDHS and which result directly or indirectly from this agreement.
- (2) All materials, including, but not limited to, visual works or text, reproduced or distributed pursuant to this agreement that include Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDHS and which result directly or indirectly from this agreement, shall include CDHS' notice of copyright, which shall read in 3mm or larger typeface: "© [Enter Current Year e.g., 2006, etc.], California Department of Health Services. This material may not be reproduced or disseminated without prior written permission from the California Department of Health Services." This notice should be placed prominently on the materials and set apart from other matter on the page where it appears. Audio productions shall contain a similar audio notice of copyright.

**d. Patent Rights**

With respect to inventions made by Contractor in the performance of this agreement, which did not result from research and development specifically included in the agreement's scope of work, Contractor hereby grants to CDHS a license as described under Section b of this provision for devices or material incorporating, or made through the use of such inventions. If such inventions result from research and development work specifically included within the agreement's scope of work, then Contractor agrees to assign to CDHS, without additional compensation, all its right, title and interest in and to such inventions and to assist CDHS in securing United States and foreign patents with respect thereto.

**e. Third-Party Intellectual Property**

Except as provided herein, Contractor agrees that its performance of this agreement shall not be dependent upon or include any Intellectual Property of Contractor or third party without first: (i) obtaining CDHS' prior written approval; and (ii) granting to or obtaining for CDHS, without additional compensation, a license, as described in Section b of this provision, for any of Contractor's or third-party's Intellectual Property in existence prior to the effective date of this agreement. If such a license upon the these terms is unattainable, and CDHS determines that the Intellectual Property should be included in or is required for Contractor's performance of this agreement, Contractor shall obtain a license under terms acceptable to CDHS.

**f. Warranties**

- (1) Contractor represents and warrants that:
  - (a) It is free to enter into and fully perform this agreement.
  - (b) It has secured and will secure all rights and licenses necessary for its performance of this agreement.
  - (c) Neither Contractor's performance of this agreement, nor the exercise by either Party of the rights granted in this agreement, nor any use, reproduction, manufacture, sale, offer to sell, import, export, modification, public and private display/performance, distribution, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDHS and which result directly or indirectly from this agreement will infringe upon or violate any Intellectual Property right, non-disclosure

obligation, or other proprietary right or interest of any third-party or entity now existing under the laws of, or hereafter existing or issued by, any state, the United States, or any foreign country. There is currently no actual or threatened claim by any such third party based on an alleged violation of any such right by Contractor.

- (d) Neither Contractor's performance nor any part of its performance will violate the right of privacy of, or constitute a libel or slander against any person or entity.
  - (e) It has secured and will secure all rights and licenses necessary for Intellectual Property including, but not limited to, consents, waivers or releases from all authors of music or performances used, and talent (radio, television and motion picture talent), owners of any interest in and to real estate, sites, locations, property or props that may be used or shown.
  - (f) It has not granted and shall not grant to any person or entity any right that would or might derogate, encumber, or interfere with any of the rights granted to CDHS in this agreement.
  - (g) It has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
  - (h) It has no knowledge of any outstanding claims, licenses or other charges, liens, or encumbrances of any kind or nature whatsoever that could affect in any way Contractor's performance of this agreement.
- (2) CDHS MAKES NO WARRANTY THAT THE INTELLECTUAL PROPERTY RESULTING FROM THIS AGREEMENT DOES NOT INFRINGE UPON ANY PATENT, TRADEMARK, COPYRIGHT OR THE LIKE, NOW EXISTING OR SUBSEQUENTLY ISSUED.

**g. Intellectual Property Indemnity**

- (1) Contractor shall indemnify, defend and hold harmless CDHS and its licensees and assignees, and its officers, directors, employees, agents, representatives, successors, and users of its products, ("Indemnitees") from and against all claims, actions, damages, losses, liabilities (or actions or proceedings with respect to any thereof), whether or not rightful, arising from any and all actions or claims by any third party or expenses related thereto (including, but not limited to, all legal expenses, court costs, and attorney's fees incurred in investigating, preparing, serving as a witness in, or defending against, any such claim, action, or proceeding, commenced or threatened) to which any of the Indemnitees may be subject, whether or not Contractor is a party to any pending or threatened litigation, which arise out of or are related to (i) the incorrectness or breach of any of the representations, warranties, covenants or agreements of Contractor pertaining to Intellectual Property; or (ii) any Intellectual Property infringement, or any other type of actual or alleged infringement claim, arising out of CDHS' use, reproduction, manufacture, sale, offer to sell, distribution, import, export, modification, public and private performance/display, license, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDHS and which result directly or indirectly from this agreement. This indemnity obligation shall apply irrespective of whether the infringement claim is based on a patent, trademark or copyright registration that issued after the effective date of this agreement. CDHS reserves the right to participate in and/or control, at Contractor's expense, any such infringement action brought against CDHS.
- (2) Should any Intellectual Property licensed by the Contractor to CDHS under this agreement become the subject of an Intellectual Property infringement claim, Contractor will exercise its authority reasonably and in good faith to preserve CDHS' right to use the licensed Intellectual Property in accordance with this agreement at no expense to CDHS. CDHS shall have the right to monitor and appear through its own counsel (at Contractor's expense) in any such claim or action. In the defense or settlement of the claim, Contractor may obtain the right for CDHS to continue using the licensed Intellectual Property; or, replace or modify the licensed Intellectual Property so that the replaced or modified Intellectual Property becomes non-

infringing provided that such replacement or modification is functionally equivalent to the original licensed Intellectual Property. If such remedies are not reasonably available, CDHS shall be entitled to a refund of all monies paid under this agreement, without restriction or limitation of any other rights and remedies available at law or in equity.

- (3) Contractor agrees that damages alone would be inadequate to compensate CDHS for breach of any term of this Intellectual Property Exhibit by Contractor. Contractor acknowledges CDHS would suffer irreparable harm in the event of such breach and agrees CDHS shall be entitled to obtain equitable relief, including without limitation an injunction, from a court of competent jurisdiction, without restriction or limitation of any other rights and remedies available at law or in equity.

#### **h. Federal Funding**

In any agreement funded in whole or in part by the federal government, CDHS may acquire and maintain the Intellectual Property rights, title, and ownership, which results directly or indirectly from the agreement; except as provided in 37 Code of Federal Regulations part 401.14; however, the federal government shall have a non-exclusive, nontransferable, irrevocable, paid-up license throughout the world to use, duplicate, or dispose of such Intellectual Property throughout the world in any manner for governmental purposes and to have and permit others to do so.

#### **i. Survival**

The provisions set forth herein shall survive any termination or expiration of this agreement or any project schedule.

### **11. Air or Water Pollution Requirements**

Any federally funded agreement and/or subcontract in excess of \$100,000 must comply with the following provisions unless said agreement is exempt under 40 CFR 15.5.

- a. Government contractors agree to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act [42 U.S.C. 1857(h)], section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).
- b. Institutions of higher education, hospitals, nonprofit organizations and commercial businesses agree to comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. 7401 et seq.), as amended, and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended.

### **12. Prior Approval of Training Seminars, Workshops or Conferences**

Contractor shall obtain prior CDHS approval of the location, costs, dates, agenda, instructors, instructional materials, and attendees at any reimbursable training seminar, workshop, or conference conducted pursuant to this contract and of any reimbursable publicity or educational materials to be made available for distribution. The Contractor shall acknowledge the support of the State whenever publicizing the work under this agreement in any media. This provision does not apply to necessary staff meetings or training sessions held for the staff of the Contractor or Subcontractor to conduct routine business matters.

### **13. Confidentiality of Information**

- a. The Contractor and its employees, agents, or subcontractors shall protect from unauthorized disclosure names and other identifying information concerning persons either receiving services pursuant to this agreement or persons whose names or identifying information become available or are disclosed to the Contractor, its employees, agents, or subcontractors as a result of services performed under this agreement, except for statistical information not identifying any such person.

- b. The Contractor and its employees, agents, or subcontractors shall not use such identifying information for any purpose other than carrying out the Contractor's obligations under this agreement.
- c. The Contractor and its employees, agents, or subcontractors shall promptly transmit to the CDHS program contract manager all requests for disclosure of such identifying information not emanating from the client or person.
- d. The Contractor shall not disclose, except as otherwise specifically permitted by this agreement or authorized by the client, any such identifying information to anyone other than CDHS without prior written authorization from the CDHS program contract manager, except if disclosure is required by State or Federal law.
- e. For purposes of this provision, identity shall include, but not be limited to name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph.

#### **14. Documents, Publications and Written Reports**

(Applicable to agreements over \$5,000 under which publications, written reports and documents are developed or produced. Government Code Section 7550.)

Any document, publication or written report (excluding progress reports, financial reports and normal contract communications) prepared as a requirement of this agreement shall contain, in a separate section preceding the main body of the document, the number and dollar amounts of all contracts and subcontracts relating to the preparation of such document or report, if the total cost for work by nonemployees of the State exceeds \$5,000.

#### **15. Dispute Resolution Process**

- a. A Contractor grievance exists whenever there is a dispute arising from CDHS' action in the administration of an agreement. If there is a dispute or grievance between the Contractor and CDHS, the Contractor must seek resolution using the procedure outlined below.
  - (1) The Contractor should first informally discuss the problem with the CDHS program contract manager. If the problem cannot be resolved informally, the Contractor shall direct its grievance together with any evidence, in writing, to the program Branch Chief. The grievance shall state the issues in dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The Branch Chief shall render a decision within ten (10) working days after receipt of the written grievance from the Contractor. The Branch Chief shall respond in writing to the Contractor indicating the decision and reasons therefore. If the Contractor disagrees with the Branch Chief's decision, the Contractor may appeal to the second level.
  - (2) When appealing to the second level, the Contractor must prepare an appeal indicating the reasons for disagreement with Branch Chief's decision. The Contractor shall include with the appeal a copy of the Contractor's original statement of dispute along with any supporting evidence and a copy of the Branch Chief's decision. The appeal shall be addressed to the Deputy Director of the division in which the branch is organized within ten (10) working days from receipt of the Branch Chief's decision. The Deputy Director of the division in which the branch is organized or his/her designee shall meet with the Contractor to review the issues raised. A written decision signed by the Deputy Director of the division in which the branch is organized or his/her designee shall be directed to the Contractor within twenty (20) working days of receipt of the Contractor's second level appeal.
- b. If the Contractor wishes to appeal the decision of the Deputy Director of the division in which the branch is organized or his/her designee, the Contractor shall follow the procedures set forth in Division 25.1 (commencing with Section 38050) of the Health and Safety Code and the regulations adopted thereunder. (Title 1, Subchapter 2.5, commencing with Section 251, California Code of Regulations.)



- c. Disputes arising out of an audit, examination of an agreement or other action not covered by subdivision (a) of Section 20204, of Chapter 2.1, Title 22, of the California Code of Regulations, and for which no procedures for appeal are provided in statute, regulation or the agreement, shall be handled in accordance with the procedures identified in Sections 51016 through 51047, Title 22, California Code of Regulations.
- d. Unless otherwise stipulated in writing by CDHS, all dispute, grievance and/or appeal correspondence shall be directed to the CDHS program contract manager.
- e. There are organizational differences within CDHS' funding programs and the management levels identified in this dispute resolution provision may not apply in every contractual situation. When a grievance is received and organizational differences exist, the Contractor shall be notified in writing by the CDHS program contract manager of the level, name, and/or title of the appropriate management official that is responsible for issuing a decision at a given level.

## 16. Financial and Compliance Audit Requirements

- a. The definitions used in this provision are contained in Section 38040 of the Health and Safety Code, which by this reference is made a part hereof.
- b. Direct service contract means a contract for services contained in local assistance or subvention programs or both (see Health and Safety [H&S] Code section 38020). Direct service contracts shall not include contracts, grants, or subventions to other governmental agencies or units of government nor contracts with regional centers or area agencies on aging (H&S Code section 38030).
- c. The Contractor, as indicated below, agrees to obtain one of the following audits:
  - (1) If the Contractor is a nonprofit organization (as defined in H&S Code section 38040) and receives \$25,000 or more from any State agency under a direct service contract; the Contractor agrees to obtain an annual single, organization wide, financial and compliance audit. Said audit shall be conducted according to Generally Accepted Auditing Standards. This audit does not fulfill the audit requirements of Paragraph c(3) below. The audit shall be completed by the 15th day of the fifth month following the end of the Contractor's fiscal year, **and/or**
  - (2) If the Contractor is a nonprofit organization (as defined in H&S Code section 38040) and receives less than \$25,000 per year from any State agency under a direct service contract, the Contractor agrees to obtain a biennial single, organization wide financial and compliance audit, unless there is evidence of fraud or other violation of state law in connection with this agreement. This audit does not fulfill the audit requirements of Paragraph c(3) below. The audit shall be completed by the 15th day of the fifth month following the end of the Contractor's fiscal year, **and/or**
  - (3) If the Contractor is a State or Local Government entity or Nonprofit organization (as defined by the Federal Office of Management and Budget [OMB] Circular A-133) and expends \$500,000 or more in Federal awards, the Contractor agrees to obtain an annual single, organization wide, financial and compliance audit according to the requirements specified in OMB Circular A-133 entitled "Audits of States, Local Governments, and Non-Profit Organizations". An audit conducted pursuant to this provision will fulfill the audit requirements outlined in Paragraphs c(1) and c(2) above. The audit shall be completed by the end of the ninth month following the end of the audit period. The requirements of this provision apply if:
    - (a) The Contractor is a recipient expending Federal awards received directly from Federal awarding agencies, or
    - (b) The Contractor is a subrecipient expending Federal awards received from a pass-through entity such as the State, County or community based organization.
  - (4) If the Contractor submits to CDHS a report of an audit other than an OMB A-133 audit, the

Contractor must also submit a certification indicating the Contractor has not expended \$500,000 or more in federal funds for the year covered by the audit report.

- d. Two copies of the audit report shall be delivered to the CDHS program funding this agreement. The audit report must identify the Contractor's legal name and the number assigned to this agreement. The audit report shall be due within 30 days after the completion of the audit. Upon receipt of said audit report, the CDHS program contract manager shall forward the audit report to CDHS' Audits and Investigations Unit if the audit report was submitted under Section 16.c(3), unless the audit report is from a City, County, or Special District within the State of California whereby the report will be retained by the funding program.
- e. The cost of the audits described herein may be included in the funding for this agreement up to the proportionate amount this agreement represents of the Contractor's total revenue. The CDHS program funding this agreement must provide advance written approval of the specific amount allowed for said audit expenses.
- f. The State or its authorized designee, including the Bureau of State Audits, is responsible for conducting agreement performance audits which are not financial and compliance audits. Performance audits are defined by Generally Accepted Government Auditing Standards.
- g. Nothing in this agreement limits the State's responsibility or authority to enforce State law or regulations, procedures, or reporting requirements arising thereto.
- h. Nothing in this provision limits the authority of the State to make audits of this agreement, provided however, that if independent audits arranged for by the Contractor meet Generally Accepted Governmental Auditing Standards, the State shall rely on those audits and any additional audit work and shall build upon the work already done.
- i. The State may, at its option, direct its own auditors to perform either of the audits described above. The Contractor will be given advance written notification, if the State chooses to exercise its option to perform said audits.
- j. The Contractor shall include a clause in any agreement the Contractor enters into with the audit firm doing the single organization wide audit to provide access by the State or Federal Government to the working papers of the independent auditor who prepares the single organization wide audit for the Contractor.
- k. Federal or state auditors shall have "expanded scope auditing" authority to conduct specific program audits during the same period in which a single organization wide audit is being performed, but the audit report has not been issued. The federal or state auditors shall review and have access to the current audit work being conducted and will not apply any testing or review procedures which have not been satisfied by previous audit work that has been completed.

The term "expanded scope auditing" is applied and defined in the U.S. General Accounting Office (GAO) issued Standards for *Audit of Government Organizations, Programs, Activities and Functions*, better known as the "yellow book".

**17. Human Subjects Use Requirements**

(Applicable only to federally funded agreements/grants in which performance, directly or through a subcontract/subaward, includes any tests or examination of materials derived from the human body.)

By signing this agreement, Contractor agrees that if any performance under this agreement or any subcontract or subagreement includes any tests or examination of materials derived from the human body for the purpose of providing information, diagnosis, prevention, treatment or assessment of disease, impairment, or health of a human being, all locations at which such examinations are performed shall meet the requirements of 42 U.S.C. Section 263a (CLIA) and the regulations thereunder.

**18. Novation Requirements**

If the Contractor proposes any novation agreement, CDHS shall act upon the proposal within 60 days after receipt of the written proposal. CDHS may review and consider the proposal, consult and negotiate with the Contractor, and accept or reject all or part of the proposal. Acceptance or rejection of the proposal may be made orally within the 60-day period and confirmed in writing within five days of said decision. Upon written acceptance of the proposal, CDHS will initiate an amendment to this agreement to formally implement the approved proposal.

**19. Debarment and Suspension Certification**

(Applicable to all agreements funded in part or whole with federal funds.)

- a. By signing this agreement, the Contractor/Grantee agrees to comply with applicable federal suspension and debarment regulations including, but not limited to 7 CFR Part 3017, 45 CFR 76, 40 CFR 32 or 34 CFR 85.
- b. By signing this agreement, the Contractor certifies to the best of its knowledge and belief, that it and its principals:
  - (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
  - (2) Have not within a three-year period preceding this application/proposal/agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - (3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in Paragraph b(2) herein; and
  - (4) Have not within a three-year period preceding this application/proposal/agreement had one or more public transactions (Federal, State or local) terminated for cause or default.
  - (5) Shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under federal regulations (i.e., 48 CFR part 9, subpart 9.4), debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction, unless authorized by the State.
  - (6) Will include a clause entitled, "Debarment and Suspension Certification" that essentially sets forth the provisions herein, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- c. If the Contractor is unable to certify to any of the statements in this certification, the Contractor shall submit an explanation to the CDHS program funding this contract.

- d. The terms and definitions herein have the meanings set out in the Definitions and Coverage sections of the rules implementing Federal Executive Order 12549.
- e. If the Contractor knowingly violates this certification, in addition to other remedies available to the Federal Government, the CDHS may terminate this agreement for cause or default.

## 20. Smoke-Free Workplace Certification

(Applicable to federally funded agreements/grants and subcontracts/subawards, that provide health, day care, early childhood development services, education or library services to children under 18 directly or through local governments.)

- a. Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where WIC coupons are redeemed.
- b. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible party.
- c. By signing this agreement, Contractor or Grantee certifies that it will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act. The prohibitions herein are effective December 26, 1994.
- d. Contractor or Grantee further agrees that it will insert this certification into any subawards (subcontracts or subgrants) entered into that provide for children's services as described in the Act.

## 21. Covenant Against Contingent Fees

(Applicable only to federally funded agreements.)

The Contractor warrants that no person or selling agency has been employed or retained to solicit/secure this agreement upon an agreement of understanding for a commission, percentage, brokerage, or contingent fee, except *bona fide* employees or *bona fide* established commercial or selling agencies retained by the Contractor for the purpose of securing business. For breach or violation of this warranty, CDHS shall have the right to annul this agreement without liability or in its discretion to deduct from the agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, and brokerage or contingent fee.

## 22. Payment Withholds

(Applicable only if a final report is required by this agreement. Not applicable to government entities.)

Unless waived or otherwise stipulated in this contract, CDHS may, at its discretion, withhold 10 percent (10%) of the face amount of the agreement, 50 percent (50%) of the final invoice, or \$3,000 whichever is greater, until CDHS receives a final report that meets the terms, conditions and/or scope of work requirements of this agreement.

**23. Performance Evaluation**

(Not applicable to grant agreements.)

CDHS may, at its discretion, evaluate the performance of the Contractor at the conclusion of this agreement. If performance is evaluated, the evaluation shall not be a public record and shall remain on file with CDHS. Negative performance evaluations may be considered by CDHS prior to making future contract awards.

**24. Officials Not to Benefit**

No members of or delegate of Congress or the State Legislature shall be admitted to any share or part of this agreement, or to any benefit that may arise therefrom. This provision shall not be construed to extend to this agreement if made with a corporation for its general benefits.

**25. Four-Digit Date Compliance**

Contractor warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or services to the State. "Four Digit Date compliant" Deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality of warranty obligations set forth elsewhere herein.

**26. Prohibited Use of State Funds for Software**

(Applicable to agreements in which computer software is used in performance of the work.)

Contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

**27. Use of Small, Minority Owned and Women's Businesses**

(Applicable to that portion of an agreement that is federally funded and entered into with institutions of higher education, hospitals, nonprofit organizations or commercial businesses.)

Positive efforts shall be made to use small businesses, minority-owned firms and women's business enterprises, whenever possible (i.e., procurement of goods and/or services). Contractors shall take all of the following steps to further this goal.

- (1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.
- (2) Make information on forthcoming purchasing and contracting opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.
- (3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.
- (4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.
- (5) Use the services and assistance, as appropriate, of such organizations as the Federal Small Business Administration and the U.S. Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

**28. Alien Ineligibility Certification**

(Applicable to sole proprietors entering federally funded agreements.)

By signing this agreement, the Contractor certifies that he/she is not an alien that is ineligible for state and local benefits, as defined in Subtitle B of the Personal Responsibility and Work Opportunity Act. (8 U.S.C. 1601, et seq.)

## **29. Union Organizing**

(Applicable only to grant agreements.)

Grantee, by signing this agreement, hereby acknowledges the applicability of Government Code 16645 through 16649 to this agreement. Furthermore, Grantee, by signing this agreement, hereby certifies that:

- a. No state funds disbursed by this grant will be used to assist, promote or deter union organizing.
- b. Grantee shall account for state funds disbursed for a specific expenditure by this grant, to show those funds were allocated to that expenditure.
- c. Grantee shall, where state funds are not designated as described in b herein, allocate, on a pro-rata basis, all disbursements that support the grant program.
- d. If Grantee makes expenditures to assist, promote or deter union organizing, Grantee will maintain records sufficient to show that no state funds were used for those expenditures, and that Grantee shall provide those records to the Attorney General upon request.

## **30. Contract Uniformity (Fringe Benefit Allowability)**

(Applicable only to nonprofit organizations.)

Pursuant to the provisions of Article 7 (commencing with Section 100525) of Chapter 3 of Part 1 of Division 101 of the Health and Safety Code, CDHS sets forth the following policies, procedures, and guidelines regarding the reimbursement of fringe benefits.

- a. As used herein fringe benefits shall mean an employment benefit given by one's employer to an employee in addition to one's regular or normal wages or salary.
- b. As used herein, fringe benefits do not include:
  - (1) Compensation for personal services paid currently or accrued by the Contractor for services of employees rendered during the term of this agreement, which is identified as regular or normal salaries and wages, annual leave, vacation, sick leave, holidays, jury duty and/or military leave/training.
  - (2) Director's and executive committee member's fees.
  - (3) Incentive awards and/or bonus incentive pay.
  - (4) Allowances for off-site pay.
  - (5) Location allowances.
  - (6) Hardship pay.
  - (7) Cost-of-living differentials
- c. Specific allowable fringe benefits include:
  - (1) Fringe benefits in the form of employer contributions for the employer's portion of payroll taxes (i.e., FICA, SUI, SDI), employee health plans (i.e., health, dental and vision), unemployment insurance, worker's compensation insurance, and the employer's share of pension/retirement plans, provided they are granted in accordance with established written organization policies and meet all legal and Internal Revenue Service requirements.
- d. To be an allowable fringe benefit, the cost must meet the following criteria:
  - (1) Be necessary and reasonable for the performance of the agreement.

- (2) Be determined in accordance with generally accepted accounting principles.
- (3) Be consistent with policies that apply uniformly to all activities of the Contractor.

e. Contractor agrees that all fringe benefits shall be at actual cost.

f. Earned/Accrued Compensation

- (1) Compensation for vacation, sick leave and holidays is limited to that amount earned/accrued within the agreement term. Unused vacation, sick leave and holidays earned from periods prior to the agreement term cannot be claimed as allowable costs. See Provision f (3)(a) for an example.
- (2) For multiple year contracts, vacation and sick leave compensation, which is earned/accrued but not paid, due to employee(s) not taking time off may be carried over and claimed within the overall term of the multiple years of the agreement. Holidays cannot be carried over from one contract year to the next. See Provision f (3)(b) for an example.
- (3) For single year agreements, vacation, sick leave and holiday compensation that is earned/accrued but not paid, due to employee(s) not taking time off within the term of the agreement, cannot be claimed as an allowable cost. See Provision f (3)(c) for an example.

(a) **Example No. 1:**

If an employee, John Doe, earns/accrues three weeks of vacation and twelve days of sick leave each year, then that is the maximum amount that may be claimed during a contract period of one year. If John Doe has five weeks of vacation and eighteen days of sick leave at the beginning of the agreement, the Contractor during a one-year agreement term may only claim up to three weeks of vacation and twelve days of sick leave actually used by the employee. Amounts earned/accrued in periods prior to the beginning of the agreement are not an allowable cost.

(b) **Example No. 2:**

If during a three-year (multiple year) agreement, John Doe does not use his three weeks of vacation in year one, or his three weeks in year two, but he does actually use nine weeks in year three; the Contractor would be allowed to claim all nine weeks paid for in year three. The total compensation over the three-year period cannot exceed 156 weeks (3 x 52 weeks).

(c) **Example No. 3:**

If during a single year agreement, John Doe works fifty weeks and used one week of vacation and one week of sick leave and all fifty-two weeks have been billed to CDHS, the remaining unused two weeks of vacation and seven days of sick leave may not be claimed as an allowable cost.

**31. Lobbying Restrictions and Disclosure Certification**

(Applicable to federally funded contracts in excess of \$100,000 per Section 1352 of the 31, U.S.C.)

**a. Certification and Disclosure Requirements**

- (1) Each person (or recipient) who requests or receives a contract, subcontract, grant, or subgrant, which is subject to Section 1352 of the 31, U.S.C., and which exceeds \$100,000 at any tier, shall file a certification (in the form set forth in Attachment 1, consisting of one page, entitled "Certification Regarding Lobbying") that the recipient has not made, and will not make, any payment prohibited by Paragraph b of this provision.
- (2) Each recipient shall file a disclosure (in the form set forth in Attachment 2, entitled "Standard Form-LLL 'disclosure of Lobbying Activities'") if such recipient has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered federal action) in connection with a contract or grant or any extension or amendment of that contract or grant, which would be prohibited under Paragraph b of this provision if paid for with appropriated funds.
- (3) Each recipient shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affect the accuracy of the information contained in any disclosure form previously filed by such person under Paragraph a(2) herein. An event that materially affects the accuracy of the information reported includes:
  - (a) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered federal action;
  - (b) A change in the person(s) or individuals(s) influencing or attempting to influence a covered federal action; or
  - (c) A change in the officer(s), employee(s), or member(s) contacted for the purpose of influencing or attempting to influence a covered federal action.
- (4) Each person (or recipient) who requests or receives from a person referred to in Paragraph a(1) of this provision a contract, subcontract, grant or subgrant exceeding \$100,000 at any tier under a contract or grant shall file a certification, and a disclosure form, if required, to the next tier above.
- (5) All disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the person referred to in Paragraph a(1) of this provision. That person shall forward all disclosure forms to CDHS program contract manager.

**b. Prohibition**

Section 1352 of Title 31, U.S.C., provides in part that no appropriated funds may be expended by the recipient of a federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered federal actions: the awarding of any federal contract, the making of any federal grant, the making of any federal loan, entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.



## Attachment 1

STATE OF CALIFORNIA  
DEPARTMENT OF HEALTH SERVICES

## CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making, awarding or entering into of this Federal contract, Federal grant, or cooperative agreement, and the extension, continuation, renewal, amendment, or modification of this Federal contract, grant, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency of the United States Government, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure of Lobbying Activities" in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontractors, subgrants, and contracts under grants and cooperative agreements) of \$100,000 or more, and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C., any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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Name of Contractor

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Printed Name of Person Signing for Contractor

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Contract / Grant Number

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Signature of Person Signing for Contractor

---

Date

---

Title

After execution by or on behalf of Contractor, please return to:

California Department of Health Services  
(Name of the CDHS program providing the funds)  
(Program's Street Address, Room Number, and MS Code)  
P.O. Box 997413  
Sacramento, CA 95899-7413

## Attachment 2

**CERTIFICATION REGARDING LOBBYING**

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352  
(See reverse for public burden disclosure)

Approved by OMB  
0348-0046

|  |   |   |
|--|---|---|
| <b>1. Type of Federal Action:</b><br>a. contract<br>b. grant<br>c. cooperative agreement<br>d. loan<br>e. loan guarantee<br>f. loan insurance  | <b>2. Status of Federal Action:</b><br>a. bid/offer/application<br>b. initial award<br>c. post-award  | <b>3. Report Type:</b><br>a. initial filing<br>b. material change<br>For Material Change Only:<br><br>Year<br>quarter<br>date of last report              |
| <b>4. Name and Address of Reporting Entity:</b><br><br>Prime Subawardee<br>Tier , if known:<br><br>Congressional District, If known:   |   | <b>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</b><br><br>Congressional District, If known:                           |
| <b>6. Federal Department/Agency:</b> _____   |   | <b>7. Federal Program Name/Description:</b><br><br>CDFA Number, if applicable:  |
| <b>8. Federal Action Number, if known:</b>   |   | <b>9. Award Amount, if known:</b>   |
| <b>10. a. Name and Address of Lobbying Entity</b><br>(If individual, last name, first name, MI):<br><br>(attach Continuation Sheet(s) SF-LLL-A, If necessary)  |   | <b>b. Name and Address of Lobbying Entity</b><br>(If individual, last name, first name, MI):<br><br>(attach Continuation Sheet(s) SF-LLL-A, If necessary) |
| <b>11. Amount of Payment (check all that apply):</b><br>\$ _____ actual _____ planned  | <b>13. Type of Payment (check all that apply):</b><br>a. retainer<br>b. one-time fee<br>c. commission<br>d. contingent fee<br>e. deferred<br>f. other, specify: |   |
| <b>12. Form of Payment (check all that apply):</b><br>a. cash<br>b. in-kind, specify: Nature _____ Value _____   |   |   |
| <b>14. Brief Description of Services Performed or to be Performed and Dates(s) of Service, including Officer(s), Employee(s), or Member(s) Contracted for Payment indicated in item 11:</b><br><br>(Attach Continuation Sheet(s) SF-LLL-A, If necessary)   |   |   |
| <b>15. Continuation Sheet(s) SF-LLL-A Attached:</b> Yes _____ No _____   |   |   |
| <b>16. Information requested through this form is authorized by Title 31, U.S.C., Section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to Title 31, U.S.C., Section 1352. This information will be reported to the Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$19,000 and not more than \$100,000 for each such failure.</b> |   | Signature: _____  |
|  |   | Print Name: _____   |
|  |   | Title: _____  |
|  |   | Telephone No.: _____ Date: _____  |
| <b>Federal Use Only</b>  |   | Authorized for Local Reproduction<br>Standard Form-LLL  |

**INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES**

This disclosure form shall be completed by the reporting entity, whether subawardee or prime federal recipients at the initiation or receipt of a covered federal action, or a material change to a previous filing, pursuant to Title 31, U.S.C., Section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered federal action. Use the SF - LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered federal action.
2. Identify the status of the covered federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered federal action.
4. Enter the full name, address, city, state, and ZIP code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1<sup>st</sup> tier. Subawards include but are not limited to subcontracts, subgrants, and contract awards under grants.
5. If the organization filing the report in Item 4 checks "Subawardee," then enter the full name, address, city, state, and ZIP code of the prime federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation United States Coast Guard.
7. Enter the federal program name or description for the covered federal action (Item 1). If known, enter the full Catalog of Federal Domestic Assistance (CDDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate federal identifying number available for the federal action identified in Item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract grant, or loan award number; the application/proposal control number assigned by the federal agency). Include prefixes, e.g., "RFP-DE-90401."
9. For a covered federal action where there has been an award or loan commitment by the federal agency, enter the federal amount of the award/loan commitment for the prime entity identified in Item 4 or 5.
10. (a) Enter the full name, address, city, state, and ZIP code of the lobbying entity engaged by the reporting entity identified in Item 4 to influence the covered federal action.
10. (b) Enter the full names of the Individual(s) performing services and include full address if different from 10.(a). Enter last name, first name, and middle initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (Item 4) to the lobbying entity (Item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with federal officials, identify the federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Office of Management and Budget, Paperwork Reduction Project, (0348-0046), Washington, DC 20503.

## Exhibit E Additional Provisions

In the event a conflict between the provisions of Exhibit C or Exhibit D(F) and Exhibit E, Additional Provisions, the provisions of Exhibit E, Additional Provisions, shall govern.

### 1. Additional Incorporated Exhibits

The following additional exhibits are attached, incorporated herein, and made a part hereof by this reference:

|           |                                     |
|-----------|-------------------------------------|
| Exhibit H | Narrative Proposal in it's entirety |
|-----------|-------------------------------------|

### 2. Amendment Process

Should either party, during the term of this agreement, desire a change or amendment to the terms of this Agreement, such changes or amendments shall be proposed in writing to the other party, who will respond in writing as to whether the proposed changes/amendments are accepted or rejected. If accepted and after negotiations are concluded, the agreed upon changes shall be made through the State's official agreement amendment process. No amendment will be considered binding on either party until it is formally approved by the State.

### 3. Cancellation/Termination

- A. This agreement may be cancelled by CDHS without cause upon 30 calendar days advance written notice to the Contractor.
- B. CDHS reserves the right to cancel or terminate this agreement immediately for cause. The Contractor may submit a written request to terminate this agreement only if CDHS substantially fails to perform its responsibilities as provided herein.
- C. The term "for cause" shall mean that the Contractor fails to meet the terms, conditions, and/or responsibilities of this agreement.
- D. Agreement termination or cancellation shall be effective as of the date indicated in CDHS' notification to the Contractor. The notice shall stipulate any final performance, invoicing or payment requirements.
- E. Upon receipt of a notice of termination or cancellation. The Contractor shall take immediate steps to stop performance and to cancel or reduce subsequent agreement costs.
- F. In the event of early termination or cancellation, the Contractor shall be entitled to compensation for services performed satisfactorily under this agreement and expenses incurred up to the date of cancellation and any non-cancelable obligations incurred in support of this agreement.

### 4. Use of Disabled Veteran Business Enterprises (DVBE)

- A. The State Legislature has declared that a fair portion of the total purchases and contracts or subcontracts for property and services for the State be placed with disabled veteran business enterprises.

**Exhibit E**  
**Additional Provisions**

- B. All DVBE participation attachments, however labeled, completed as a condition of bidding, contracting, or amending a subject agreement, are incorporated herein and made a part of this agreement by this reference.
- C. Contractor agrees to use the proposed DVBEs as identified in previously submitted DVBE participation attachments, unless the Contractor submits a written request for substitution of a like or alternate subcontractor. All requests for substitution must be approved by CDHS, in writing, prior to using a substituted subcontractor.
- D. Requests for substitution must be approved by the program funding this agreement and must include:
  - 1) A written explanation of the reason for the substitution.
  - 2) A written description of the business enterprise that will be substituted, including its DVBE certification status.
  - 3) If applicable, the reason a non-DVBE subcontractor is proposed for use.
  - 4) A written description of the work to be performed by the substituted subcontractor and an identification of the percentage share/dollar amount of the overall contract that the substituted subcontractor will perform.
- E. If requested by CDHS, Contractor agrees to provide verification, in a form agreed to by CDHS, that DVBE subcontractor participation under this agreement is in compliance with the goals specified at the time of contract award or with any subsequent amendment.

**5. Dispute Resolution Process**

- A. This provision replaces and supersedes provision 15 of Exhibit D (F)
- B. If a dispute arises between the Contractor and CDHS, the Contractor must seek resolution using the process outlined below.
  - 1) The Contractor should first informally discuss the problem with the CDHS program contract manager. If the problem cannot be resolved informally, the Contractor must direct the grievance together with any evidence, in writing, to the program Branch Chief. The grievance must state the issues in dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The Branch Chief must render a decision within ten (10) working days after receipt of the written grievance from the Contractor. The Branch Chief shall respond in writing to the Contractor indicating the decision and reasons therefore. Should the Contractor disagree with the Branch Chief's decision, the Contractor may appeal to the second level.
  - 2) When appealing to the second level the Contractor must prepare an appeal indicating the reasons for disagreement with the Branch Chief's decision. The Contractor shall include with the appeal a copy of the Contractor's original

### **Exhibit E**

#### **Additional Provisions**

statement of dispute along with any supporting evidence and a copy of the Branch Chief's decision. The appeal shall be addressed to the Deputy Director of the division in which the branch is organized within then (10) working days form receipt of the Branch Chief's decision. The Deputy Director of the division in which the branch is organized or his/her designee shall meet with the Contractor to review the issues raised. A written decision signed by the Deputy Director of the division in which the branch is organized or his/her designee shall be directed to the Contractor within twenty (20) working days of receipt of the Contractor's second level appeal. The decision rendered by the Deputy Director or his/her designee shall be the final administrative determination of the Department.

- 3) Unless otherwise stipulated in writing by CDHS, all dispute, grievance and/or appeal correspondence shall be directed to the CDHS program contract manager.
- 4) There are organizational differences within CDHS' funding programs and the management levels identified in this dispute resolution provision may not apply in every contractual situation. When a grievance is received and organizational differences exist, the Contractor shall be notified in writing by the CDHS program contract manager of the level, name and/or title of the appropriate management official that is responsible for issuing a decision at a given level.

#### **6. Performance Evaluation**

- A. This provision replaces and supersedes provision 23 of Exhibit D(F).
- B. The Contractor's performance under this agreement shall be evaluated at the conclusion of the term of this agreement. The evaluation shall include, but not be limited to:
  - 1) Whether the contracted work or services were completed as specified in the agreement, and reasons for and amount of any cost overruns.
  - 2) Whether the contracted work or services met the quality standards specified in the agreement.
  - 3) Whether the Contractor fulfilled all requirements of the agreement.
  - 4) Factors outside the control of the Contractor, which caused difficulties in contractor performance. Factors outside the control of the Contractor shall not include a Subcontractor's poor performance.
- C. The evaluation of the Contractor shall not be a public record.

#### **7. Progress Reports or Meetings**

- A. Contractor shall submit progress reports or attend meetings with state personnel at intervals determined by CDHS to determine if the Contractor is on the right track,

## **Exhibit E**

### **Additional Provisions**

whether the project is on schedule, provide communication of interim findings, and afford occasions for airing difficulties or special problems encountered so that remedies can be developed quickly.

- B. At the conclusion of this agreement and if applicable, Contractor shall hold a final meeting at which Contractor shall present any findings, conclusions, and recommendations. If required by this agreement, Contractor shall submit a comprehensive final report.

#### **8. Legal Services Contract Requirements**

The Contractor shall:

- A. Adhere to legal cost and billing guidelines designated by CDHS.
- B. Adhere to litigation plans designated by CDHS.
- C. Adhere to case phasing of activities designated by CDHS.
- D. Submit and adhere to legal budgets as designated by CDHS.
- E. Maintain legal malpractice insurance in an amount not less than the amount designated by CDHS. Said amount shall be indicated in a separate letter to the Contractor.
- F. Submit to legal bill audits and law firm if requested by CDHS. Such audits may be conducted by State employees or its designees or by any legal cost control providers retained by CDHS for such purposes.

#### **9. Insurance Requirements**

Contractor shall comply with the following insurance requirements:

- A. Commercial General Liability

The Contractor must furnish to CDHS a certificate of insurance stating that commercial general liability insurance of not less than \$1,000,000 per occurrence for bodily injury and property damage liability combined is presently in effect for the Contractor. The commercial general liability insurance policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal and advertising injury, and liability assumed under an insured agreement. The commercial general liability insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the Contractor's limit of liability.

- B. The certificate of insurance must be issued by an insurance company acceptable to the Department of General Services (DGS) Office of Risk Management or be provided through partial or total self-insurance acceptable to DGS.

**Exhibit E**  
**Additional Provisions**

- C. The certificate of insurance must include the following provisions:
1. The insurer will not cancel the insured's coverage without giving 30 days prior written notice to the California Department of health Services, and
  2. The State of California, its officers, agents, employees, and servants are included as additional insureds, but only with respect to work performed for the State of California under this agreement.
- D. The Contractor agrees that the insurance required herein will remain in effect at all times during the term of the agreement. In the event said insurance coverage expires at any time or times during the term of this agreement, the Contractor agrees to provide, at least 30 calendar days before said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the agreement or for a period of not less than one year. CDHS may, in addition to any other remedies it may have, terminate this agreement on the occurrence of such event. New certificates of insurance are subject to the approval of DGS, and the Contractor agrees that no work or services shall be performed prior to such approval.
- E. CDHS will not be responsible for any premiums, deductibles, or assessments on the insurance policy.

**10. Avoidance of Conflicts of Interest by Contractor**

- A. CDHS intends to avoid any real or apparent conflict of interest on the part of the Contractor, subcontractors, or employees, officers and directors of the Contractor or subcontractors. Thus, CDHS reserves the right to determine, at its sole discretion, whether any information, assertion or claim received from any source indicates the existence of a real or apparent conflict of interest; and, if a conflict is found to exist, to require the Contractor to submit additional information or a plan for resolving the conflict, subject to CDHS review and prior approval.
- B. Conflicts of interest include, but are not limited to:
- 1) An instance where the Contractor or any of its subcontractors, or any employee, officer, or director of the Contractor or any subcontractor has an interest, financial or otherwise, whereby the use or disclosure of information obtained while performing services under the contract would allow for private or personal benefit or for any purpose that is contrary to the goals and objectives of the contract.
  - 2) An instance where the Contractor's or any subcontractor's employees, officers, or directors use their positions for purposes that are, or give the appearance of being, motivated by a desire for private gain for themselves or others, such as those with whom they have family, business or other ties.
- C. If CDHS is or becomes aware of a known or suspected conflict of interest, the Contractor will be given an opportunity to submit additional information or to resolve



## **Exhibit E**

### **Additional Provisions**

the conflict. A Contractor with a suspected conflict of interest will have five (5) working days from the date of notification of the conflict by CDHS to provide complete information regarding the suspected conflict. If a conflict of interest is determined to exist by CDHS and cannot be resolved to the satisfaction of CDHS, the conflict will be grounds for terminating the contract. CDHS may, at its discretion upon receipt of a written request from the Contractor, authorize an extension of the timeline indicated herein.

#### **11. Prohibited Follow-on Contracts**

- A. No person, firm, or subsidiary thereof who has been awarded a consulting services agreement may submit a bid for, nor be awarded an agreement for, the provision of services, procurement of goods or supplies, or any other related action which is required, suggested, or otherwise deemed appropriate in the end product of the consulting services agreement.
- B. Paragraph A does not apply to any person, firm, or subsidiary thereof who is awarded a subcontract of a consulting services agreement which totals no more than 10 percent of the total monetary value of the consulting services agreement.
- C. Paragraphs A and B do not apply to consulting services agreements subject to Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

#### **12. Domestic Partners**

This provision supersedes and replaces Provision 7 (Domestic partners) in the Department of General Services' Contractor Certification Clauses incorporated by reference within the General Terms and Conditions (GTC) cited on the face of the agreement. Based upon an existing program agreement, CDHS concludes that this agreement is not subject to the requirements of Public Contract Code Section 10295.3 governing domestic partners.

#### **13. Use of Small Business Subcontractors**

- A. All Non-Small Business Subcontractors Preference Request attachments and Small Business Subcontractor/Supplier Acknowledgement attachments, however labeled, completed as a condition of bidding, are incorporated herein and made a part of this agreement by this reference.
- B. Contractor agrees to use each small business subcontractor/supplier, as identified in previously submitted Non-Small Business Subcontractor Preference Request attachments, unless the Contractor submits a written request for substitution of a like or alternate subcontractor. All requests for substitution must be approved by CDHS, in writing (including email or fax), prior to using a proposed substitute subcontractor.

**Exhibit E**  
**Additional Provisions**

- C. Requests for substitution must be approved by the funding program and must include, at a minimum:
- 1) An explanation of the reason for the substitution.
  - 2) A written description of the business enterprise that will be substituted, including its small business certification status.
  - 3) If substitution of an alternate small business does not occur, include a written justification and description of the steps taken to try to acquire a new small business and how that portion of the contract will be fulfilled.
  - 4) A written description of the work to be performed by the substituted subcontractors identified by both task (if applicable) and dollar amount or percentage of the overall contract that he a commercially useful function in the contract pursuant to Title 2, California Code of Regulations §1896.6.
- D. CDHS may consent to the substitution set forth in Public Contract Code Section 4107 of the Subcontracting Fair Practices Act.
- E. Prior to the approval of the prime contractor's request for the substitution, the funding program shall give notice in writing to the listed subcontractor of the prime contractor's request to substitute and the reason for the request to substitute. The notice shall be served by certified or registered mail to the last known address of the subcontractor. The listed subcontractor that has been notified shall have five (5) working days after the receipt of the notice to submit written objections to the substitution to the funding program. Failure to file these written objections shall constitute the listed subcontractor's consent to the substitution. If written objections are filed, CDHS shall give notice in writing of at least five (5) working days to the listed subcontractor of a hearing by CDHS on the prime contractor's request for substitution.
- F. Failure of the contractor to subcontract with the small businesses listed in its bid or proposal to CDHS, or failure to follow applicable substitution rules and regulations may be grounds for the Department of General Services to impose sanctions pursuant to Government Code Section 14842.5 and Title 2, California Code of Regulations §1896.18 and §1896.20.
- G. If requested by CDHS, Contractor agrees to provide documentation/verification, in a form agreed to by CDHS, that small business subcontractor usages under this agreement complies with the commitments specified during the contactor selection process.

**14. Departmental Reorganization**

- A. The parties to this agreement acknowledge that the California Public Health Act of 2006 (Act Senate Bill 162, Chapter 241, Statutes 2006), effective July 1, 2007, establishes that California Department of Public Health (CDPH) ad renames the California Department of Health Services (CDHS) as the California Department of Health Care services.(DHCS).

**Exhibit E**  
**Additional Provisions**

- B. Agreements approved before July 1, 2007 shall continue in full force and effect, with the renamed DHCS and the newly formed CDPH assuming all of the rights, obligations, liabilities, and duties of the former CDHS and any of its predecessors as relates to the duties, powers, purposes, responsibilities and jurisdiction vested by the Act in each of the resulting departments.
- C. Agreements approved on or after July 1, 2007 that refer to CDHS shall be interpreted to refer to the renamed DHCS or the newly formed CDPH, as appropriate under the terms of the agreement. DHCS or CDPH, as appropriate under the terms of the agreement, shall assume all of the rights, obligations, liabilities, and duties of the former CDHS and any of its predecessors as relates to the duties, powers, purposes, responsibilities, and jurisdiction vested by the Act in each of the resulting departments. The assumption by each department shall not in any way affect the rights of the parties to the agreement.
- D. Agreements approved on or after July 1, 2007 that refer to the Payment Systems Division (PSD) will become the Fiscal Intermediary and Contracts Oversight Division (FICOD). All references to PSD after Jul1, 2007, will be changed to FICOD to reflect the name change.

**15. Inspection Rights and Access Requirements**

- A. The Contractor shall allow CDHS, the Department of Health and Human Services (DHHS), the Comptroller General of the United States, the State Auditor and other authorized federal and State agencies or their duly authorized representatives, to inspect, monitor or otherwise evaluate the quality, appropriateness, and timeliness of services performed under this Contract. Such activities shall include, but not be limited to interviewing employees; obtaining, reviewing, copying and auditing any and all books, records, management systems, and facilities maintained by the Contractor and subcontractors, pertaining to such services, at any time during normal business hours.
- B. As used in this Section, books and records shall include, but are not limited to, all physical records originated or prepared pursuant to the performance under this Contract including working papers; reports in development; reports submitted to CDHS; financial records and books of account; study designs, tools, software, and databases; management information system files; plan data; all medical records, medical charts and prescription files; other documentation pertaining to clinical outcomes, medical, and non-medical services rendered to plan Members; and any related information, regardless of (1) the medium in which these books, and records are recorded or reproduced; and (2) the location where compiled and/or stored. All electronic files must be available in a format requested by CDHS.
- C. Upon request, at any time during the period of this Contract, the Contractor shall furnish any relevant information, record, or copy of it, to CDHS, DHHS, the Comptroller General of the United States, the State Auditor and other authorized Federal and State agencies, or their duly authorized representatives (hereafter known as "Authorized Representatives".) If a copy is provided, the Authorized

### **Exhibit E Additional Provisions**

Representatives shall have the right to view the original documentation upon request.

- D. Notwithstanding any shorter period provided in Exhibit D(F), this Contract is subject to the examination and audit of the State Auditor for a period of five (5) years after final payment under this Contract.
- E. To assure compliance with the provisions of this Contract, applicable Federal and State laws and regulations and for any other reasonable purpose, Authorized Representatives shall have the right to access the Contractor's premises, with or without notice. This shall include the Contractor's and subcontractor's management facilities or other places where Contract duties are being performed.
- F. Staff designated by Authorized Representatives shall have access to all security areas and the Contractor shall provide, and shall require any and all of its subcontractors to provide, reasonable facilities to such Authorized Representatives in the performance of their duties. Access shall be undertaken in such a manner as not to unduly delay the work of the Contractor and/or subcontractor(s).
- G. The right of access herein shall include on-site visits by Authorized Representatives and by the successor Contractor when accompanied by a CDHS representative(s). Any security device or system which the Contractor implements to identify and monitor persons seeking access to secured areas shall be supplied by the Contractor to the Authorized Representatives.

#### **16. Record Keeping, Audit/Inspection of Records**

The Contractor shall maintain books and records as defined in Section 11, compiled and/or stored at the Contractor's defined storage location. The records shall be of sufficient information to disclose how the Contractor discharged its obligations under this Contract. These books and records shall disclose the quantity of services provided under this Contract and the manner in which the Contractor administered its daily business. The cost, manner and amount of payment made to any vendors and subcontractors for those services shall be maintained and disclosed, as needed, under the terms and conditions of the Escrow Documentation of this contract.

#### **17. Separation of Books and Records**

The Contractor shall keep all books and records or other similar materials pertaining to this Contract, as defined in Section 11, separate from the books and records of other activities not related to this Contract. Contractor related records shall be maintained at the Contractor's defined storage location.

#### **18. Publications**

Notwithstanding Exhibit D(F), books and records as defined in Section 11 shall not be published, disseminated or otherwise released in any manner without the express written consent of CDHS. This restriction shall also apply to the publication of any

## **Exhibit E Additional Provisions**

activities relevant to the obligations or Scope of Work under this Contract, and to articles and papers proposed for publication in any newspapers, bulletins or journals.

### **19. Copyrights**

Notwithstanding Exhibit D(F), products and materials as defined in Section 11 shall not be securable for copyrights by the Contractor or subcontractors. As specified in Section

11: Inspection Rights and Access Requirements, any products or materials produced as part of this Contract are the property of the State, and such copyrights and the right to copyright products and materials shall belong to the State and no further action shall be necessary to perfect the State's rights in them.

### **20. Management Information Systems (MIS)**

The Contractor will maintain and ensure that the MIS hardware and software are adequate to fulfill the requirements of this project for the life of this Contract. Electronic databases and data files will be transmitted to CDHS during the Turnover Period, in a format such as DB2 or ACSII or other format determined by CDHS.

### **21. Contractor Certifications**

With respect to any report, invoice, record, papers, documents, books of account, or other contract-required data submitted pursuant to the Contracting Officer in support of an invoice or document submitted to meet contract requirements, including, but not limited to, proof of insurance, Lobbying Certifications and Disclosures, Conflict of Interest Disclosure Statements and/or Conflict of Interest Avoidance Plans, pursuant to the requirements of the contract, the Contractor Representative or his/her designee shall certify that the report, invoice, record, papers, documents, books of account or other contract-required data is current, accurate, complete and in full compliance with legal and contractual requirements to the best of that individual's knowledge and belief, unless the requirement for such certification is expressly waived by CDHS in writing.

Where in this contract there is a requirement that the Contractor "certify" or submit a "certification," such certification shall be in the form of an affidavit or declaration under penalty of perjury, dated and signed by the Contractor Representative or his/her designee.

### **22. Protection from Unauthorized Disclosure**

Notwithstanding any other provision of this Contract, names of persons receiving public social services are confidential and are to be protected from unauthorized disclosure in accordance with Title 42, Code of Federal Regulations, Section 431.300 et seq. and Section 14100.2, W&I Code and regulations adopted there under. For the purpose of this Contract, all information, records, data, and data elements collected and maintained shall be protected by the Contractor from unauthorized disclosure.

## **Exhibit E Additional Provisions**

### **23. Contractor's Duties to Maintain Confidentiality**

In addition to the requirements of Exhibit D(F), any identifiable information concerning current or former Medi-Cal (managed care and/or fee-for-service) beneficiaries that is obtained by the Contractor or its subcontractor(s) under the Scope of Work of this Contract shall, at the termination of this Contract, (1) be returned to CDHS or maintained according to written procedures sent to the Contractor by CDHS for this purpose; and (2) protected from all other employees of the Contractor not assigned to the Scope of Work under the terms of this Contract.

### **24. Patent or Copyright Trademark and Trade Secret Infringement**

The Contractor represents and warrants that no program, process, composition, writing, equipment, appliance or device, or any trademark, service mark, logo, idea, or any other work or invention of any nature or any other tangible or intangible property whatsoever developed, provided, or used by the Contractor (other than provided or used by CDHS or another Contractor at CDHS' request) in connection with its performance under this contract, infringes or will infringe any patent, copyright, trademark or other service mark of any other person, or is or will be a trade secret of any other person.

In the event a claim of infringement is brought against CDHS because of the work performed by the Contractor, this Exhibit E, Additional Provision 22, Patent or Copyright Trademark and Trade Secret Infringement, will apply. CDHS will inform the Contractor as soon as practicable of the claim or action alleging such infringement and shall give the Contractor the full opportunity to participate in the response thereto and the defense thereof, including without limitation, any agreement relating to the settlement thereof pertaining only to the rights of the Contractor.

### **25. Turnover Requirements**

The objective of the Turnover period described below is to ensure the orderly and timely transfer of necessary data from the Contractor to the State and then to a successor Contractor, if any. The orderly transfer of required data is intended to ensure continuity of support services.

The Contractor shall be flexible to changing requirements. If the State exercises its extension and amendment options, all Turnover activities shall be delayed a commensurate period of time.

Upon termination or expiration of this contract, or upon the direction of the State, the Contractor shall:

- A. Transfer control of all data, files computer programs, procedures, and any other material (electronic or otherwise) prepared for the State under the terms of the contract to the State within 15 days of receiving written notice from the State.
- B. Certify to the State that all documents (electronic and otherwise) produced pursuant to the contract have been delivered to the State and that no confidential material has been retained by the Contractor.

### **Exhibit E**

#### **Additional Provisions**

This physical transfer will be in an orderly, timely, and efficient manner, and in full compliance with the security and confidentiality provisions of this contract. The State shall retain the authority to designate the manner and method by which the data and other material shall be transferred. If the State determines that additional data or other materials are required for Turnover, the State shall notify the Contractor in writing. Turnover related activities are not billable activities; however, costs of reproduction shall be borne by the State.

If the Contractor does not provide or perform the requirement within 15 days of the written notice, or longer if allowed by the State, the State may impose liquidated damages of \$500 per requirement per day for each day the requirement continues not to be provided or performed. If after 15 additional days from the date of the State imposed liquidated damages, the requirements still have not been provided or performed, the State, after written notice to the Contractor, may increase the liquidated damages assessment to \$1,000 per State working day per requirement until the requirement is provided or performed. No liquidated damages may be claimed by the State solely because the requirement is not provided as scheduled unless the writing specifies the deliverable's "critical must date" and the writing is signed by the State Contracting Officer and the Contractor's agent.

The Contractor shall develop a report describing, at a level of detail sufficient to be understandable to a layperson, the data and other materials to be transferred to the State. This report shall be submitted to the Contracting Officer within five State working days of termination or expiration of the contract.

All data and information provided by the Contractor shall be accompanied by letter, signed by the responsible authority, certifying to the accuracy and completeness of the material supplied.

#### **26. Drug Free Requirements**

Every person or organization awarded a contract or a grant for the procurement of any property or services from any state agency shall certify to the contracting or granting agency that it will provide a drug-free workplace by doing all of the following:

- A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's workplace and specifying the actions that will be taken against employees for violations of the prohibition.
- B. Establishing a drug-free awareness program to inform employees about all of the following:
  - 1) The dangers of drug abuse in the workplace.
  - 2) The person's or organization's policy of maintaining a drug-free workplace.
  - 3) Any available drug counseling, rehabilitation, and employee assistance programs.

**Exhibit E**  
**Additional Provisions**

- 4) The penalties that may be imposed upon employees for drug abuse violations.
- C. Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required by subdivision A and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

**27. Delegation of Authority**

- A. The Department intends to implement the contract through a single administrator, herein called the "Contracting Officer." The Director of CDHS shall appoint the Contracting Officer. The Contracting Officer may delegate his/her authority to act to an authorized representative through written notice to the Contractor.
- B. The Contractor shall designate a single administrator, herein called the Contractor Representative. The Contractor Representative shall be the Contractor's Official responsible for managing the Contractor's operation. The Contractor Representative shall be empowered to legally bind the Contractor to all agreements reached with CDHS.
- C. The Contractor must designate the Contractor Representative in writing prior to contract execution. Such designation shall be submitted to the Contracting Officer in accordance with Exhibit E, Additional Provision 8.A., Contract Communication.

**28. Conformance with State and Federal Statutes and Regulations**

The Contractor shall comply with the requirements of State of California and federal law, to include related regulations and published guidelines, to the extent that these authorities contain requirements applicable to Contractor's performance under the contract. These authorities include, without limitation, the California W&I Code, the California Government Code, the California Public Contract Code, the Code of Federal Regulations, Title 2 and Title 22 of the California Code of Regulations, and the Health Insurance Portability and Accountability Act (HIPAA) of 1996 (Public Law 104-191, dated August 21, 1996). (See Exhibit H, HIPAA Business Associate Addendum.)

**29. Contract Communication**

- A. Any notice required by the contract shall be written and sent by registered or certified mail, return receipt requested, or shall be delivered in hand and a receipt given by the recipient, and shall be effective upon receipt by the Contracting Officer or the Contractor, whichever is the addressee; and
- B. Notwithstanding any other provision of the contract, any Contracting Officer's approvals must be received in writing by the Contractor prior to the Contractor taking any action requiring such approval, unless the Contracting Officer specifically exempts, in writing, the Contractor from this requirement.



## Contractor's Release

### Instructions to Contractor:

**With final invoice(s) submit one (1) original and one (1) copy.** The original must bear the original signature of a person authorized to bind the Contractor. The additional copy may bear photocopied signatures.

### Submission of Final Invoice

Pursuant to **contract number** \_\_\_\_\_ entered into between the State of California Department of Health Services (CDHS) and the Contractor (identified below), the Contractor does acknowledge that final payment has been requested via **invoice number(s)** \_\_\_\_\_, in the **amount(s) of \$** \_\_\_\_\_ and **dated** \_\_\_\_\_.  
If necessary, enter "See Attached" in the appropriate blocks and attach a list of invoice numbers, dollar amounts and invoice dates.

### Release of all Obligations

By signing this form, and upon receipt of the amount specified in the invoice number(s) referenced above, the Contractor does hereby release and discharge the State, its officers, agents and employees of and from any and all liabilities, obligations, claims, and demands whatsoever arising from the above referenced contract.

### Repayments Due to Audit Exceptions / Record Retention

By signing this form, Contractor acknowledges that expenses authorized for reimbursement does not guarantee final allowability of said expenses. Contractor agrees that the amount of any sustained audit exceptions resulting from any subsequent audit made after final payment will be refunded to the State.

All expense and accounting records related to the above referenced contract must be maintained for audit purposes for no less than three years beyond the date of final payment, unless a longer term is stated in said contract.

### Recycled Product Use Certification

By signing this form, Contractor certifies under penalty of perjury that a minimum of 0% unless otherwise specified in writing of post consumer material, as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether it meets the requirements of Public Contract Code Section 12209. Contractor specifies that printer or duplication cartridges offered or sold to the State comply with the requirements of Section 12156(e).

### Reminder to Return State Equipment/Property (If Applicable)

(Applies only if equipment was provided by CDHS or purchased with or reimbursed by contract funds)

Unless CDHS has approved the continued use and possession of State equipment (as defined in the above referenced contract) for use in connection with another CDHS agreement, Contractor agrees to promptly initiate arrangements to account for and return said equipment to CDHS, at CDHS's expense, if said equipment has not passed its useful life expectancy as defined in the above referenced contract.

### Patents / Other Issues

By signing this form, Contractor further agrees, in connection with patent matters and with any claims that are not specifically released as set forth above, that it will comply with all of the provisions contained in the above referenced contract, including, but not limited to, those provisions relating to notification to the State and related to the defense or prosecution of litigation.

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**ONLY SIGN AND DATE THIS DOCUMENT WHEN ATTACHING TO THE FINAL INVOICE**

Contractor's Legal Name (as on contract): \_\_\_\_\_

Signature of Contractor or Official Designee: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name/Title of Person Signing: \_\_\_\_\_

**CDHS Distribution:** Accounting (Original)      Program

**Exhibit G**  
**HIPAA Business Associate Addendum**

**I. Recitals – HIGH RISK**

- A. This Contract (Agreement) has been determined to constitute a business associate relationship under the Health Insurance Portability and Accountability Act ("HIPAA") and its implementing privacy and security regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations:").
- B. The California Department of Health Services ("CDHS") wishes to disclose to Business Associate certain information pursuant to the terms of this Agreement, some of which may constitute Protected Health Information ("PHI").
- C. "Protected Health Information" or "PHI" means any information, whether oral or recorded in any form or medium that relates to the past, present, or future physical or mental condition of an individual, the provision of health and dental care to an individual, or the past, present, or future payment for the provision of health and dental care to an individual; and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI shall have the meaning given to such term under HIPAA and HIPAA regulations, as the same may be amended from time to time.
- D. "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of PHI, or confidential data that is essential to the ongoing operation of the Business Associate's organization and intended for internal use; or interference with system operations in an information system.
- E. As set forth in this Agreement Contractor, here and after, is the Business Associate of CDHS that provides services, arranges, performs or assists in the performance of functions or activities on behalf of CDHS and creates, receives, maintains, transmits, uses or discloses PHI.
- F. CDHS and Business Associate desire to protect the privacy and provide for the security of PHI created, received, maintained, transmitted, used or disclosed pursuant to this Agreement, in compliance with HIPAA and HIPAA regulations and other applicable laws.
- G. The purpose of the Addendum is to satisfy certain standards and requirements of HIPAA and the HIPAA regulations.
- H. The terms used in this Addendum, but not otherwise defined, shall have the same meanings as those terms in the HIPAA regulations.

In exchanging information pursuant to this Agreement, the parties agree as follows:

**1. Permitted Uses and Disclosures of PHI by Business Associate**

- A. ***Permitted Uses and Disclosures.*** Except as otherwise indicated in this Addendum, Business Associate may use or disclose PHI only to perform functions, activities or services specified in this Agreement, for, or on behalf of CDHS, provided that such use or disclosure would not violate the HIPAA regulations, if done by CDHS.
- B. ***Specific Use and Disclosure Provisions.*** Except as otherwise indicated in this Addendum, Business Associate may:
  - 1) ***Use and disclose for management and administration.*** Use and disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are required by law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as required by law or for the purpose

**Exhibit G****HIPAA Business Associate Addendum**

for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware that the confidentiality of the information has been breached.

- 2) **Provision of Data Aggregation Services.** Use PHI to provide data aggregation services to CDHS. Data aggregation means the combining of PHI created or received by the Business Associate on behalf of CDHS with PHI received by the Business Associate in its capacity as the Business Associate of another covered entity, to permit data analyses that relate to the health care operations of CDHS.

## **2. Responsibilities of Business Associate**

Business Associate agrees:

- A. **Nondisclosure.** Not to use or disclose Protected Health Information (PHI) other than as permitted or required by this Agreement or as required by law.
- B. **Safeguards.** To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI, including electronic PHI, that it creates, receives, maintains, uses or transmits on behalf of CDHS; and to prevent use or disclosure of PHI other than as provided for by this Agreement. Business Associate shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Business Associate's operations and the nature and scope of its activities, and which incorporates the requirements of section C, Security, below. Business Associate will provide CDHS with its current and updated policies.
- C. **Security.** To take any and all steps necessary to ensure the continuous security of all computerized data systems containing PHI, and provide data security procedures for the use of CDHS at the end of the contract period. These steps shall include, at a minimum:
  - 1) Complying with all of the data system security precautions listed in this Agreement or in an Exhibit incorporated into this Agreement;
  - 2) Achieving and maintaining compliance with the HIPAA Security Rule (45 CFR Parts 160 and 164), as necessary in conducting operations on behalf of CDHS under this Agreement;
  - 3) Providing a level and scope of security that is at least comparable to the level and scope of security established by the Office of Management and Budget in OMB Circular No. A-130, Appendix III- Security of Federal Automated Information Systems, which sets forth guidelines for automated information systems in Federal agencies; and
  - 4) Complying with the safeguard provisions in the Department's Information Security Policy, embodied in Health Administrative Manual (HAM), sections 6-1000 et seq. and in the Security and Risk Management Policy in the Information Technology Section of the State Administrative Manual (SAM), sections 4840 et seq., in so far as the security standards in these manuals apply to Business Associate's operations. In case of a conflict between any of the security standards contained in any of these enumerated sources of security standards, the most stringent shall apply. The most stringent means that safeguard which provides the highest level of protection to PHI from unauthorized disclosure. Further, Business Associate must comply with changes to these standards that occur after the effective date of this Agreement.

Business Associate shall designate a Security Officer to oversee its data security program who shall be responsible for carrying out the requirements of this section and for communicating on security matters with CDHS.

**Exhibit G**  
HIPAA Business Associate Addendum

- D. **Mitigation of Harmful Effects.** To mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate or its subcontractors in violation of the requirements of this Addendum.
- E. **Business Associate's Agents.** To ensure that any agents, including subcontractors, to whom Business Associate provides PHI received from or created or received by Business Associate on behalf of CDHS, agree to the same restrictions and conditions that apply to Business Associate with respect to such PHI, including implementation of reasonable and appropriate administrative, physical, and technical safeguards to protect such PHI; and to incorporate, when applicable, the relevant provisions of this Addendum into each subcontract or subaward to such agents or subcontractors.
- F. **Availability of Information to CDHS and Individuals.** To provide access as CDHS may require, and in the time and manner designated by CDHS (upon reasonable notice and during Business Associate's normal business hours) to PHI in a Designated Record Set, to CDHS (or, as directed by CDHS), to an Individual, in accordance with 45 CFR Section 164.524. Designated Record Set means the group of records maintained for CDHS that includes medical, dental and billing records about individuals; enrollment, payment, claims adjudication, and case or medical management systems maintained for CDHS health plans; or those records used to make decisions about individuals on behalf of CDHS. Business Associate shall use the forms and processes developed by CDHS for this purpose and shall respond to requests for access to records transmitted by CDHS within fifteen (15) calendar days of receipt of the request by producing the records or verifying that there are none.
- G. **Amendment of PHI.** To make any amendment(s) to PHI that CDHS directs or agrees to pursuant to 45 CFR Section 164.526, in the time and manner designated by CDHS.
- H. **Internal Practices.** To make Business Associate's internal practices, books and records relating to the use and disclosure of PHI received from CDHS, or created or received by Business Associate on behalf of CDHS, available to CDHS or to the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by CDHS or by the Secretary, for purposes of determining CDHS's compliance with the HIPAA regulations.
- I. **Documentation of Disclosures.** To document and make available to CDHS or (at the direction of CDHS) to an Individual such disclosures of PHI, and information related to such disclosures, necessary to respond to a proper request by the subject Individual for an accounting of disclosures of PHI, in accordance with 45 CFR 164.528.
- J. **Notification of Breach.** During the term of this Agreement:
- 1) **Discovery of Breach.** To notify CDHS **immediately by telephone call plus email or fax** upon the discovery of breach of security of PHI in computerized form if the PHI was, or is reasonably believed to have been, acquired by an unauthorized person; or **within 24 hours by email or fax** of any suspected security incident, intrusion or unauthorized use or disclosure of PHI in violation of this Agreement and this Addendum, or potential loss of confidential data affecting this Agreement. Notification shall be provided to the CDHS contract manager, the CDHS Privacy Officer and the CDHS Information Security Officer. If the incident occurs after business hours or on a weekend or holiday and involves electronic PHI, notification shall be provided by calling the CDHS ITSD Help Desk. Business Associate shall take:
    - i. Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment and
    - ii. Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.

**Exhibit G**  
**HIPAA Business Associate Addendum**

- 2) **Investigation of Breach.** To immediately investigate such security incident, breach, or unauthorized use or disclosure of PHI or confidential data. Within 72 hours of the discovery, to notify the CDHS contract manager(s), the CDHS Privacy Officer, and the CDHS Information Security Officer of:
- i. What data elements were involved and the extent of the data involved in the breach,
  - ii. A description of the unauthorized persons known or reasonably believed to have improperly used or disclosed PHI or confidential data,
  - iii. A description of where the PHI or confidential data is believed to have been improperly transmitted, sent, or utilized,
  - iv. A description of the probable causes of the improper use or disclosure; and
  - v. Whether Civil Code sections 1798.29 or 1798.82 or any other federal or state laws requiring individual notifications of breaches are triggered.
- 3) **Written Report.** To provide a written report of the investigation to the CDHS contract managers, the CDHS Privacy Officer, and the CDHS Information Security Officer within ten (10) working days of the discovery of the breach or unauthorized use or disclosure. The report shall include, but not be limited to, the information specified above, as well as a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure.
- 4) **Notification of Individuals.** To notify individuals of the breach or unauthorized use or disclosure when notification is required under state or federal law and to pay any costs of such notifications, as well as any costs associated with the breach. The CDHS contract manager, the CDHS Privacy Officer, and the CDHS Information Security Officer shall approve the time, manner and content of any such notifications.
- 5) **CDHS Contact Information.** To direct communications to the above referenced CDHS staff, the Contractor shall initiate contact as indicated herein. CDHS reserves the right to make changes to the contact information below by giving written notice to the Contractor. Said changes shall not require an amendment to this Agreement or Addendum.

| CDHS Contract Manager   | CDHS Privacy Officer  | CDHS Information Security Officer   |
|---|---|---|
| See Provision 4 of Exhibit A for Contract Manager information | Privacy Officer<br>c/o: Office of Legal Services<br>California Department of Health Services<br>P.O. Box 997413, MS 0011<br>Sacramento, CA 95899-7413<br><br>Email: <a href="mailto:privacyofficer@dhs.ca.gov">privacyofficer@dhs.ca.gov</a><br>Telephone: (916) 445-4646 | Information Security Officer<br>Information Security Office<br>P.O. Box 997413, MS 6302<br>Sacramento, CA 95899-7413<br><br>Email: <a href="mailto:dhsiso@dhs.ca.gov">dhsiso@dhs.ca.gov</a><br>Telephone: ITSD Help Desk<br>(916) 440-7000 or<br>(800) 579-0874 |

- K. **Employee Training and Discipline.** To train and use reasonable measures to ensure compliance with the requirements of this Addendum by employees who assist in the performance of functions or activities on behalf of CDHS under this Agreement and use or disclose PHI; and discipline such employees who intentionally violate any provisions of this Addendum, including by termination of employment. In complying with the provisions of this section K, Business Associate shall observe the following requirements:

**Exhibit G**  
**HIPAA Business Associate Addendum**

- 1) Business Associate shall provide information privacy and security training, at least annually, at its own expense, to all its employees who assist in the performance of functions or activities on behalf of CDHS under this Agreement and use or disclose PHI.
- 2) Business Associate shall require each employee who receives information privacy and security training to sign a certification, indicating the employee's name and the date on which the training was completed.
- 3) Business Associate shall retain each employee's written certifications for CDHS inspection for a period of three years following contract termination.

### 3. Obligations of CDHS

CDHS agrees to:

- A. **Notice of Privacy Practices.** Provide Business Associate with the Notice of Privacy Practices that CDHS produces in accordance with 45 CFR 164.520, as well as any changes to such notice. Visit this Internet address to view the most current Notice of Privacy Practices:  
<http://www.dhs.ca.gov/privacyoffice>.
- B. **Permission by Individuals for Use and Disclosure of PHI.** Provide the Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect the Business Associate's permitted or required uses and disclosures.
- C. **Notification of Restrictions.** Notify the Business Associate of any restriction to the use or disclosure of PHI that CDHS has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect the Business Associate's use or disclosure of PHI.
- D. **Requests Conflicting with HIPAA Rules.** Not request the Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA regulations if done by CDHS.

### 4. Audits, Inspection and Enforcement

From time to time, CDHS may inspect the facilities, systems, books and records of Business Associate to monitor compliance with this Agreement and this Addendum. Business Associate shall promptly remedy any violation of any provision of this Addendum and shall certify the same to the CDHS Privacy Officer in writing. The fact that CDHS inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems and procedures does not relieve Business Associate of its responsibility to comply with this Addendum, nor does CDHS's:

- A. Failure to detect or
- B. Detection, but failure to notify Business Associate or require Business Associate's remediation of any unsatisfactory practices constitute acceptance of such practice or a waiver of CDHS's enforcement rights under this Agreement and this Addendum.

### 5. Termination

- A. **Termination for Cause.** Upon CDHS's knowledge of a material breach of this Addendum by Business Associate, CDHS shall:
  - 1) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by CDHS;

**Exhibit G****HIPAA Business Associate Addendum**

- 2) Immediately terminate this Agreement if Business Associate has breached a material term of this Addendum and cure is not possible; or
- 3) If neither cure nor termination is feasible, report the violation to the Secretary of the U.S. Department of Health and Human Services.

- B. **Judicial or Administrative Proceedings.** Business Associate will notify CDHS if it is named as a defendant in a criminal proceeding for a violation of HIPAA. CDHS may terminate this Agreement if Business Associate is found guilty of a criminal violation of HIPAA. CDHS may terminate this Agreement if a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, or other security or privacy laws is made in any administrative or civil proceeding in which the Business Associate is a party or has been joined.
- C. **Effect of Termination.** Upon termination or expiration of this Agreement for any reason, Business Associate shall return or destroy all PHI received from CDHS (or created or received by Business Associate on behalf of CDHS) that Business Associate still maintains in any form, and shall retain no copies of such PHI or, if return or destruction is not feasible, shall continue to extend the protections of this Addendum to such information, and shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.

**6. Miscellaneous Provisions**

- A. **Disclaimer.** CDHS makes no warranty or representation that compliance by Business Associate with this Addendum, HIPAA or the HIPAA regulations will be adequate or satisfactory for Business Associate's own purposes or that any information in Business Associate's possession or control, or transmitted or received by Business Associate, is or will be secure from unauthorized use or disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.
- B. **Amendment.** The parties acknowledge that federal and state laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HIPAA regulations and other applicable laws relating to the security or privacy of PHI. Upon CDHS's request, Business Associate agrees to promptly enter into negotiations with CDHS concerning an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA regulations or other applicable laws. CDHS may terminate this Agreement upon thirty (30) days written notice in the event:
- 1) Business Associate does not promptly enter into negotiations to amend this Addendum when requested by CDHS pursuant to this Section or
  - 2) Business Associate does not enter into an amendment providing assurances regarding the safeguarding of PHI that CDHS in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the HIPAA regulations.
- C. **Assistance in Litigation or Administrative Proceedings.** Business Associate shall make itself and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under this Agreement, available to CDHS at no cost to CDHS to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CDHS, its directors, officers or employees based upon claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy, which involves inactions or actions by the Business Associate, except where Business Associate or its subcontractor, employee or agent is a named adverse party.

**Exhibit G**  
HIPAA Business Associate Addendum

- D. **No Third-Party Beneficiaries.** Nothing express or implied in the terms and conditions of this Addendum is intended to confer, nor shall anything herein confer, upon any person other than CDHS or Business Associate and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.
- E. **Interpretation.** The terms and conditions in this Addendum shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HIPAA regulations and applicable state laws. The parties agree that any ambiguity in the terms and conditions of this Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the HIPAA regulations.
- F. **Regulatory References.** A reference in the terms and conditions of this Addendum to a section in the HIPAA regulations means the section as in effect or as amended.
- G. **Survival.** The respective rights and obligations of Business Associate under Section 6.C of this Addendum shall survive the termination or expiration of this Agreement.
- H. **No Waiver of Obligations.** No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.